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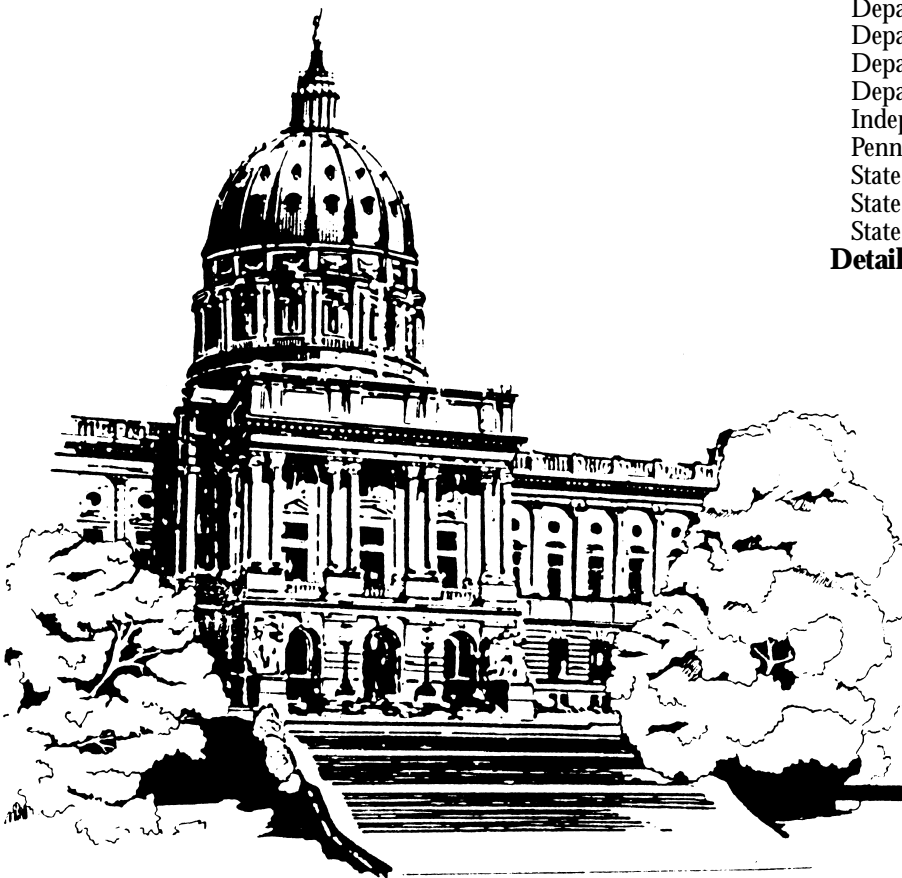
See Part II page 7195 for the
Department of Public Welfare's
Medical Assistance Provider
Appeal Procedures

Part I

Agencies in this issue

The Governor
The General Assembly
The Courts
Department of Environmental Protection
Department of General Services
Department of Military and Veterans Affairs
Department of Public Welfare
Department of Transportation
Independent Regulatory Review Commission
Pennsylvania Public Utility Commission
State Board of Cosmetology
State Board of Education
State Board of Osteopathic Medicine

Detailed list of contents appears inside.



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**Latest Pennsylvania Code Reporter
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No. 384, November 2006

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CONTENTS

THE GOVERNOR

Notice of veto (3 documents).....7104, 7105, 7106

THE GENERAL ASSEMBLY

Cost-of-living factor under the Public Official Compensation Law..... 7107
Recent actions during the 2006 regular session of the General Assembly..... 7107

COMMISSION ON SENTENCING

Meetings scheduled 7109

THE COURTS

LOCAL COURT RULES

Bradford County

Local civil rules 205.2(B), 206.4(C), 229 and 1301 ... 7125

Somerset County

Consolidated rules of court:
No. 42 miscellaneous 2006 7127
No. 53 miscellaneous 2006 7128
No. 54 miscellaneous 2006 7129
No. 55 miscellaneous 2006 7129

Westmoreland County

Rules W212.1, W1301, W1301.1, W1308; no. 3 of 2006 7134

RULES OF CIVIL PROCEDURE

Amendments to the rules of civil procedure relating to domestic relations matters; recommendation 83 7122
Order amending rules 1910.11, 1910.27, 1920.31 1920.33 and 1920.54; no. 466 civil procedural rules; doc. no. 5 7113
Order amending rules 1910.13-1 and 1910.13-2; no. 467 civil procedural rules; doc. no. 5 7110

EXECUTIVE AGENCIES

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices

Applications, actions and special notices..... 7147
Availability of technical guidance 7178
Laboratory Accreditation Advisory Committee; meeting cancellation..... 7179

DEPARTMENT OF GENERAL SERVICES

Notices

State contracts information..... 7187

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

Notices

Admissions of nonveterans to State veterans' homes..... 7180

DEPARTMENT OF PUBLIC WELFARE

Rules and Regulations

Medical Assistance provider appeal procedures..... 7195

DEPARTMENT OF TRANSPORTATION

Proposed Rulemaking

Roadside rest areas 7140

Notices

Sale of land no longer required for transportation... 7120

INDEPENDENT REGULATORY REVIEW COMMISSION

Notices

Notice of comments issued 7180
Notice of filing of final rulemaking..... 7185

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Notices

Merger..... 7185
Natural gas service (2 documents) 7185

STATE BOARD OF COSMETOLOGY

Notices

Bureau of Professional and Occupational Affairs v.:
Ann Chan and Hong TK Pham t/d/b/a Victoria
Nails; doc. no. 1794-45-2006 7186
Erin G. Foley; doc. no. 0194-45-2006 7186

STATE BOARD OF EDUCATION

Proposed Rulemaking

Certification of professional personnel..... 7141

STATE BOARD OF OSTEOPATHIC MEDICINE

Rules and Regulations

Respiratory therapists 7137

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READER'S GUIDE TO THE PENNSYLVANIA BULLETIN AND PENNSYLVANIA CODE

Pennsylvania Bulletin

The *Pennsylvania Bulletin* is the official gazette of the Commonwealth of Pennsylvania. It is published every week and includes a table of contents. A cumulative subject matter index is published quarterly.

The *Pennsylvania Bulletin* serves several purposes. First, it is the temporary supplement to the *Pennsylvania Code*, which is the official codification of agency rules and regulations and other statutorily authorized documents. Changes in the codified text, whether by adoption, amendment, repeal or emergency action must be published in the *Pennsylvania Bulletin*. Further, agencies proposing changes to the codified text do so in the *Pennsylvania Bulletin*.

Second, the *Pennsylvania Bulletin* also publishes: Governor's Executive Orders; State Contract Notices; Summaries of Enacted Statutes; Statewide and Local Court Rules; Attorney General Opinions; Motor Carrier Applications before the Public Utility Commission; Applications and Actions before the Department of Environmental Protection; Orders of the Independent Regulatory Review Commission; and other documents authorized by law.

The text of certain documents published in the *Pennsylvania Bulletin* is the only valid and enforceable text. Courts are required to take judicial notice of the *Pennsylvania Bulletin*.

Adoption, Amendment or Repeal of Regulations

Generally an agency wishing to adopt, amend or repeal regulations must first publish in the *Pennsylvania Bulletin* a Notice of Proposed Rulemaking. There are limited instances where the agency may omit the proposal step; they still must publish the adopted version.

The Notice of Proposed Rulemaking contains the full text of the change, the agency contact person, a fiscal note required by law and background for the action.

The agency then allows sufficient time for public comment before taking final action. An adopted proposal must be published in the *Pennsylvania*

Bulletin before it can take effect. If the agency wishes to adopt changes to the Notice of Proposed Rulemaking to enlarge the scope, they must re-propose.

Citation to the *Pennsylvania Bulletin*

Cite material in the *Pennsylvania Bulletin* by volume number and page number. Example: Volume 1, *Pennsylvania Bulletin*, page 801 (short form: 1 Pa.B. 801).

Pennsylvania Code

The *Pennsylvania Code* is the official codification of rules and regulations issued by Commonwealth agencies and other statutorily authorized documents. The *Pennsylvania Bulletin* is the temporary supplement to the *Pennsylvania Code*, printing changes as soon as they occur. These changes are then permanently codified by the *Pennsylvania Code Reporter*, a monthly, loose-leaf supplement.

The *Pennsylvania Code* is cited by title number and section number. Example: Title 10 *Pennsylvania Code*, § 1.1 (short form: 10 Pa.Code § 1.1).

Under the *Pennsylvania Code* codification system, each regulation is assigned a unique number by title and section. Titles roughly parallel the organization of Commonwealth government. Title 1 *Pennsylvania Code* lists every agency and its corresponding *Code* title location.

How to Find Documents

Search for your area of interest in the *Pennsylvania Code*.

The *Pennsylvania Code* contains, as Finding Aids, subject indexes for the complete *Code* and for each individual title, a list of Statutes Used As Authority for Adopting Rules and a list of annotated cases. Source Notes give you the history of the documents. To see if there have been recent changes, not yet codified, check the List of *Pennsylvania Code* Chapters Affected in the most recent issue of the *Pennsylvania Bulletin*.

The *Pennsylvania Bulletin* also publishes a quarterly List of Pennsylvania Code Sections Affected which lists the regulations in numerical order, followed by the citation to the *Pennsylvania Bulletin* in which the change occurred.

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Printing Format

Material proposed to be added to an existing rule or regulation is printed in **bold face** and material proposed to be deleted from such a rule or regulation is enclosed in brackets [] and printed in **bold face**. Asterisks indicate ellipsis of *Pennsylvania Code* text retained without change. Proposed new or additional regulations are printed in ordinary style face.

Fiscal Notes

Section 612 of The Administrative Code of 1929 (71 P. S. § 232) requires that the Office of Budget prepare a fiscal note for regulatory actions and administrative procedures of the administrative departments, boards, commissions or authorities receiving money from the State Treasury stating whether the proposed action or procedure causes a loss of revenue or an increase in the cost of programs for the Commonwealth or its political subdivisions; that the fiscal note be published in the *Pennsylvania Bulletin* at the same time as the proposed change is advertised; and that the fiscal note shall provide the following information: (1) the designation of the fund out of which the appropriation providing for expenditures under the action or procedure shall be made; (2) the probable cost for the fiscal year the program is implemented; (3) projected cost estimate of the program for each of the five succeeding fiscal years; (4) fiscal history of the program for which expenditures are to be made; (5) probable loss of revenue for the fiscal year of its implementation; (6) projected loss of revenue from the program for each of the five succeeding fiscal years; (7) line item, if any, of the General Appropriation Act or other appropriation act out of which expenditures or losses of Commonwealth funds shall occur as a result of the action or procedures; (8) recommendation, if any, of the Secretary of the Budget and the reasons therefor.

The required information is published in the foregoing order immediately following the proposed change to which it relates; the omission of an item indicates that the agency text of the fiscal note states that there is no information available with respect thereto. In items (3) and (6) information is set forth for the first through fifth fiscal years; in that order, following the year the program is implemented, which is stated. In item (4) information is set forth for the current and two immediately preceding years, in that order. In item (8) the recommendation, if any, made by the Secretary of Budget is published with the fiscal note. See 4 Pa. Code § 7.231 *et seq.* Where “no fiscal impact” is published, the statement means no additional cost or revenue loss to the Commonwealth or its local political subdivision is intended.

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List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2006.

4 Pa. Code (Administration)

Adopted Rules

1	1741
6	378, 381, 1039, 4160, 4162, 4165
7	1633, 4168, 4170
161	194
241	2515
243	2516
249	2517

Proposed Rules

250	4732
-----------	------

Statements of Policy

1	4205
9 29, 397, 724, 1049, 2730, 3565, 3669, 3829, 4610, 6538, 6539	
114	2017

7 Pa. Code (Agriculture)

Adopted Rules

49	6285
128b	3231

Proposed Rules

49	936
130e	288, 4505
143	5785
144	5785
145	2016, 5875
146	5875
147	5875

Statements of Policy

130e	196
------------	-----

10 Pa. Code (Banks and Banking)

Unclassified	4010
--------------------	------

12 Pa. Code (Commerce, Trade and Local Government)

Adopted Rules

141	283
143	5685
147	4002
149	3087

Proposed Rules

143	559
145	3820

Statements of Policy

123	6411
-----------	------

22 Pa. Code (Education)

Adopted Rules

4	3528
31	3650
49	3655
171	1645

Proposed Rules

4	2981
11	2981
12	2981

36	3280
49	7141
339	560
405	3253

25 Pa. Code (Environmental Protection)

Adopted Rules

78	465
83	2636, 6096
93	1648
109	465
252	465
261a	705
901	2391
1021	709

Proposed Rules

77	5608
86	4200
87	5608
88	5608
89	5608
121	715, 1991
123	3185
126	715
127	1991, 3275
210	5608
215	7028
221	7028
225	7028
230	7028
240	7028
245 (with correction)	1851, 2016
803	3547
804	3547
805	3547
901	4726

Statements of Policy

16	3117
----------	------

28 Pa. Code (Health and Safety)

Adopted Rules

25	1218
----------	------

Proposed Rules

101	6403
117	6403

31 Pa. Code (Insurance)

Adopted Rules

73	3665
84a	3667
105	4180

Proposed Rules

73	391
84a	392
118a	3276

34 Pa. Code (Labor and Industry)

Adopted Rules

3	514
3a	514

Proposed Rules

127	2913, 4507
501	3822

Statements of Policy

67	957
231	6547

37 Pa. Code (Law)**Adopted Rules**

81	1495
203	5871

Proposed Rules

79	6510
95	3094
203	3828

Statements of Policy

200	957, 2282
801	5987

49 Pa. Code (Professional and Vocational Standards)**Adopted Rules**

1	1496
15	4003
16	7009
17	532
18	4466, 7009
19 (with correction)	536, 714
21	2396, 2402, 2667, 2673
25	3236, 7137
27	2518, 3237
29	2675, 5607
31	4608
39	2678
41	2680, 3813
45	1648
47	4469, 7022
48	4469, 7022
49	4469, 7022

Proposed Rules

5	5979
7	1229, 1231
16	1233, 2411
17	1233
18	2411
31	578, 1240, 5984
33	6409
36	2530
40	5982
42	5981

52 Pa. Code (Public Utilities)**Adopted Rules**

1	2097, 2281
3	2097, 2281
5	2097, 2281, 2971
29	4181
31	4181
59	3092
62	1748

Proposed Rules

54	956
57	956, 6097
63	1044, 1886, 1897
64	1897
67	6303
71	1897

73	1897
75 (with correction)	571, 942, 6289, 6409

Statements of Policy

69 (correction)	5991, 6107
-----------------------	------------

Proposed Statements of Policy

1	7033
3	7033
5	7033
69	824, 4013

55 Pa. Code (Public Welfare)**Adopted Rules**

41	7195
601	285
1187	3207
1189	3207

Proposed Rules

20	3539
168	3262
1181	3539
2380	3539
2390	3539
3130	3539
3140	3539
3270	2686, 3539
3280	2686, 3539
3290	2686, 3539
3300	2686
3680	3539
3700	3539
6400	3539
6500	3539

Statements of Policy

1141	5786
------------	------

58 Pa. Code (Recreation)**Adopted Rules**

61	5872, 5976
63	1124, 1126, 4724, 5872
65	1126, 4724, 5872, 5976
69	5872
71	4724
73	4724
131	2971
137	2972
139	2971, 3244
141	1990, 2973, 2974, 2975, 3250, 3251
143	2976, 3813
147	194, 2976, 2977, 2978, 2979, 3251
163	6095

Proposed Rules

51	4729
53	1220
61	1656, 2708
63	1220, 1655, 2708
65	1655, 1656, 2708, 4727
69	2708, 5687
71	1655
73	1655
77	1220
79	1220, 2724
97	6288
131	12, 1498, 4203
135	3275
139	12, 13
141	19, 20, 21, 22, 1400, 1498, 2529, 5783, 5784

143	23, 2727
147	23, 25, 26, 27, 1401
163	2173
401	5690
403	5690
405	5690
407	5690
451	5700
461	6517
463	6517
471	5700
481	5687

Temporary Regulations

401	679, 909, 1347, 1577, 2615, 2899, 3407, 3939
403	3940, 3943
405	2899, 3407, 3939, 3943, 3945
421	909, 2615, 2899, 3407, 3939, 3943, 3945
423	681, 1347, 3939, 3945
431	3948
435	2615, 2900, 3939, 3943
436	3409
437	909, 3411
438	3951
440	679
441	679, 681, 909, 2899, 3407, 3413, 3939, 3945, 3952
443	3407
461	3416, 3954
463	1577
465	910, 1347, 1577, 3407, 3416, 3954
466	3416
467	3954
481	1347
491	3943
492	1578
493	1578, 3440, 3939, 3943
494	1578, 2899, 3407
499	2615, 2899
501	3407
503	2902
511	2905
513	3441

Statements of Policy

461a	3442, 3965, 4443
465a	919, 1586
466a	3447

61 Pa. Code (Revenue)**Adopted Rules**

31	2525
46	2525
60	2525
111	822
875	2406
901	4475

Temporary Regulations

1001 (with correction)	3450, 3789
------------------------	------------

Statements of Policy

9	3673
60	1130
125 (with correction)	959, 1130
170	1403, 3673

64 Pa. Code (Securities Commission)**Proposed Rules**

203	3542
205	3542
207	3542

209	3542
210	3542
303	3542
504	3542
602	3542
603	3542
604	3542
609	3542
1001	3542

67 Pa. Code (Transportation)**Adopted Rules**

63	2684
86	1128
177	3815, 3817
201	537
203	537
204	537
211 (with correction)	537, 714
212	537
217	537

Proposed Rules

105	12
443	7140
457	3273

204 Pa. Code (Judicial System General Provisions)**Adopted Rules**

29	5965
71	1642
81	173, 3807
83	1490, 1642, 1745, 3646, 3807
85	929
87	929
89	2368
91	929, 1490
93	929, 1490, 2368
207	1491
211	5966

Proposed Rules

81	2801
83	1363, 2801

207 Pa. Code (Judicial Conduct)**Adopted Rules**

1	5870
3	5870
21	1213, 4597
33	2954
51	1367, 2954

Proposed Rules

1	4172
3	4172

210 Pa. Code (Appellate Procedure)**Adopted Rules**

1	5966
3	6507
21	6086
25	6086
67	1745, 2171, 3646, 6086, 6632

Proposed Rules

1	5554
3	4457
9	5554
11	5554
13	5554

19 (with correction)	5967, 6282
21	5554
25	5554
27	5554
31	5554
33	5554

225 Pa. Code (Rules of Evidence)

Adopted Rules

ART. I	384
ART. IV	384, 1213

Proposed Rules

ART. I	3977
ART. VI	3978

231 Pa. Code (Rules of Civil Procedure)

Adopted Rules

15	5777
200	272, 1745, 3085, 3807
1000	1745
1300	174, 693, 2629, 3979
1350	693
1400	693
1480	693
1900	2369
1910	2629, 3979, 4709, 6632, 7110, 7113
1915	4709
1920	4709, 7113
1930	4709, 5571
3000	176, 6849
Part II	6762

Proposed Rules

4	5971
200	272, 934, 3521
1000	510, 4458, 5971
1700	5971
1900	1369, 5561
1910	10, 273, 385, 1381, 3979
1915	6088, 7122
1920	273, 6849
1930	693
2250	272, 5971
3000	386, 3523, 4458
4000	4461
Part II	6760

234 Pa. Code (Rules of Criminal Procedure)

Adopted Rules

1	181, 694, 4172
2	3085
3	1385
4	1385, 1396
5	181, 694, 1385, 1397, 2279, 2631, 3808
6	1385

7	1396
10	1385, 2631

Proposed Rules

1	4597
4	2505
5	814, 4597

237 Pa. Code (Juvenile Rules)

Adopted Rules

1	186
3	186
6	186
8	186
11	5571
12	5571
13	5571
14	5571
15	5571
16	5571
17	5571
18	5571

Proposed Rules

5	6089
---------	------

246 Pa. Code (Minor Court Civil Rules)

Adopted Rules

200	2955
300	2955
400	2955
500	2955
1000	3997
1200	3810

Proposed Rules

200	3981
400	3981
1000	3981

249 Pa. Code (Philadelphia Rules)

Unclassified . 188, 512, 815, 1643, 1843, 1846, 4173, 7007

252 Pa. Code (Allegheny Rules)

Unclassified 3812, 6633

255 Pa. Code (Local Court Rules)

Unclassified 189, 388, 512, 935, 1043, 1216, 1399, 1491, 1644, 1850, 1986, 2171, 2280, 2381, 2512, 2513, 2960, 2969, 2970, 3086, 3230, 3525, 3526, 3646, 3647, 3648, 3649, 3812, 3998, 3999, 4000, 4177, 4178, 4179, 4462, 4463, 4464, 4465, 4601, 4602, 4603, 4604, 4606, 4713, 4714, 4715, 4719, 4720, 4721, 4722, 5606, 5682, 5779, 5780, 5974, 6092, 6093, 6282, 6283, 6284, 6375, 6376, 6377, 6386, 6402, 6509, 6669, 6670, 6850, 6851, 7007, 7008, 7125, 7127, 7128, 7129, 7134

THE GOVERNOR

Notice of Veto

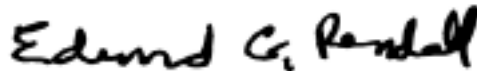
November 9, 2006

*To the Honorable, the Senate
of the Commonwealth of Pennsylvania:*

I am returning Senate Bill 157 without my approval. I regret doing so since this bill provides for the installment payments of the Local Services Tax. This tax which is capped at \$52 is collected by employers. Under this bill, employers would be required to apportion the deduction of the \$52 over the full period of employment, thereby decreasing the one time impact of the deduction on the taxpayer. I strongly support the installment requirement provided for in this bill. I also believe that the standard requirement that those earning under \$12,000 per year be exempted from this tax is good public policy and effectively mirrors the state's progressive Tax Back program for the payment of Personal Income Tax.

Notwithstanding the improvements provided for in this bill, the timeline for implementation of these changes is simply not reasonable. The bill, sent to me on October 30, requires that every municipality that currently collects the Emergency Municipal Services Tax at a rate higher than \$10 advertise its intention to pass an ordinance to comply with this legislation no later than November 24th, and pass the ordinance by December 31st. The bill also requires municipalities that intend to begin collecting this tax in 2007 for the first time to advertise their intention to pass an ordinance by November 17th, and to pass the ordinance by December 1st. Likewise, businesses across the state will have very little time to adjust their payroll systems to ensure the appropriate collection of this tax.

I am also deeply concerned that due to the short window permitted for the passage of these local ordinances municipalities across the state will lose revenues already planned for in their annual budgets, which have already been adopted. My concerns are echoed by the Pennsylvania League of Cities and Municipalities, the Pennsylvania Association of Township Supervisors, and the Pennsylvania Association of Boroughs in their letter urging a veto. In addition to their letter and the seven others I received from localities and associations urging a veto, I received a letter from the City of Altoona which provided clear evidence of the problems this bill will create for municipal budgets in the current fiscal year. As a result, I am returning this legislation without my signature. I urge the legislature to pass legislation that permits the important taxpayer benefits provided for in SB 157 in a bill that also ensures reasonable time periods for implementation of these changes.



Governor

[Pa.B. Doc. No. 06-2295. Filed for public inspection November 22, 2006, 9:00 a.m.]

Notice of Veto

November 9, 2006

*To the Honorable House of Representatives
of the Commonwealth of Pennsylvania:*

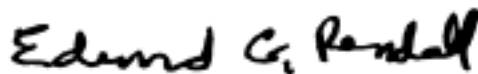
I am returning House Bill 2202 without my approval. Pennsylvania already pays for home infusion therapy for over 52,000 Commonwealth residents. For the bulk of those receiving Medicaid-based services, the Commonwealth covers the cost of the drugs and the cost of the nurse to come to the home to assist the patient and monitor the therapy. With respect to those Medicaid recipients who are covered in the fee-for-service system, this bill would require the Commonwealth to absorb the cost of a new service offered by pharmacies regardless of whether the pharmacy service is medically appropriate or necessary. There is also the potential that as drafted this bill will result in cost shifting from the Federal government to the Commonwealth for the home infusion services provided to those individuals known as "dual eligibles."

The Department of Public Welfare manages regulatory and administrative processes that establish Medicaid payment protocols. This legislation is an attempt to go around those established systems and add a new unfunded mandated payment to the budget and thus a new unfunded obligation for the taxpayers of the Commonwealth. Throughout the drafting of this bill the Department of Public Welfare urged the parties to engage in the Commonwealth's routine administrative processes to determine the appropriate payment protocols for these medical services. I am disappointed that this offer was refused and as a result there may be instances where the pharmacy services may be warranted but payment for those services will still not be appropriately defined and paid.

Finally this bill includes a troubling drafting error that, were it to become law, would have the unfortunate consequence of making it illegal for the Department of Public Welfare to pay for home infusion therapy for some of the sickest residents who are under 65 years old and destitute. Under current eligibility rules, not all Medical Assistance recipients are eligible for prescription drug coverage. However, the language in Section 443.9 of the bill could be interpreted to prohibit the payment for home nursing services required for home infusion therapy since the Commonwealth is not also the payer for the prescribed medicine.

I have proven over the past four years that the Commonwealth can be fiscally responsible, maintain a balanced budget and still make steady progress toward meeting the needs of our most vulnerable Pennsylvanians. This bill will result in a \$7 million increase in costs to the Department of Public Welfare without the identification of a compensating cut or provision of additional revenue to pay for this increase in expenditures. I have in the past, and will continue, in the future to provide additional funding for critically needed health care. But I have consistently enforced a "pay as you go policy" when it comes to the state budget—expenditure increases must not be legislated on an ad-hoc basis during the fiscal year. I will not sign legislation that either significantly increases spending or reduces revenue without a specific plan to pay for it.

For these reason I must withhold my signature from House Bill 2202.



Governor

[Pa.B. Doc. No. 06-2296. Filed for public inspection November 22, 2006, 9:00 a.m.]

Notice of Veto

November 9, 2006

*To the Honorable, the House of Representatives
of the Commonwealth of Pennsylvania:*

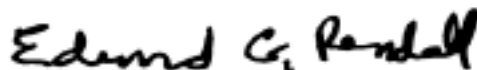
I am returning House Bill 2282 without my approval. I regret doing so since this bill offers a tax benefit to National Guard members enabling them to exempt from their income active duty pay earned during the period of deployment for national or international emergencies. This element of the bill was part of my original Support Our Troops package that I proposed on Memorial Day in 2005. Unfortunately, the bill that provided this benefit for our National Guard members was hijacked as a vehicle to resolve litigation pending between internet hotel booking services and the City of Philadelphia.

In addition to using a bill intended to benefit the National Guard to respond to the request of internet hotel reservation services seeking to cap what they must pay for local hotel taxes, this bill also includes substantive drafting errors which would require, if House Bill 2282 were enacted, new corrective legislation or costly litigation to resolve. The Chief Counsel for the Pennsylvania Department of Revenue confirms that as written the bill may be understood to cap the hotel occupancy tax rate and/or it may mean to narrow the base of the locally defined hotel room rental tax rate—it's impossible to know what the intent or impact of the bill will really be. Beyond my substantive opposition to measures that would roll-back the hotel tax in the two major tourism centers of our state, the lack of precision of the language alone gives me cause to veto this bill

Finally I veto this bill, and would do so if subsequent legislation came to me again, because it will result in a substantial loss of revenue to localities. In Philadelphia, over the next five years the City could have to forego anywhere from \$55 million to more than \$200 million depending on how the bill is interpreted. Likewise, Allegheny County could lose at least \$28 million in local revenues in the same time period. In both counties the proceeds of these taxes are pledged to pay the debt on their convention center bonds. As such, rolling back and capping this tax will require each municipality to tap other revenues that are pledged to local services, their school districts and other capital expenditures to pay the shortfall in hotel taxes caused by this bill.

I recognize that the introduction of internet hotel reservation services raised new questions for our state and local tax codes. I strongly believe that we must ensure that local and state government as well as Pennsylvania businesses are not adversely affected by internet based companies who seek legislation to avoid duly imposed taxes.

For the reasons stated above I am returning HB 2282 without my signature. I urge the legislature to pass legislation that offers our active duty National Guard members the tax benefits intended for them when this bill was first introduced on December 5th, 2005. If that legislation comes to me without other objectionable and unrelated provisions I will sign it immediately.



Governor

[Pa.B. Doc. No. 06-2297. Filed for public inspection November 22, 2006, 9:00 a.m.]

THE GENERAL ASSEMBLY

Cost-of-Living Factor Under the Public Official Compensation Law

Under section 4(d) of the Public Official Compensation Law (Act 72 of 2005), for the 12-month period beginning December 1, 2006, through November 30, 2007, the salary of the members of the General Assembly shall be increased by a cost-of-living factor which is determined by increasing the amount of the salary by the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U) for the Pennsylvania, New Jersey, Delaware and Maryland area, officially reported by the United States Department of Labor, Bureau of Labor Statistics for the period of November 1, 2005, through October 31, 2006.

The percentage increase and the new salary amount have been determined jointly by the Chief Clerk of the Senate and the Chief Clerk of the House of Representatives as follows:

The cumulative percentage change in the CPI-U for November 1, 2005, through October 31, 2006, equals 1.9759%. The new salary amount equals \$73,613.62.

Under section 4(d.1) of the Public Official Compensation Law (Act 72 of 2005), for the 12-month period beginning December 1, 2006, through November 30, 2007, the additional compensation of the officers and leaders of the General Assembly shall be increased by a cost-of-living factor which is determined by increasing the amount of the salary by the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U) for the Pennsylvania, New Jersey, Delaware and Maryland area, officially reported by the United States Department of Labor, Bureau of Labor Statistics for the period from November 1, 2005, through October 31, 2006.

The percentage increase and the new compensation amounts have been determined jointly by the Chief Clerk of the Senate and the Chief Clerk of the House of Representatives as follows:

<i>Leadership Position</i>	<i>% Increase</i>	<i>New Compensation</i>
Speaker/President pro tempore	1.9759%	\$41,301.94
Majority Floor Leader	1.9759%	\$33,043.12
Minority Floor Leader	1.9759%	\$33,043.12
Majority Whip	1.9759%	\$25,077.18
Minority Whip	1.9759%	\$25,077.18
Majority Caucus Chairman	1.9759%	\$15,635.85
Minority Caucus Chairman	1.9759%	\$15,635.85
Appropriations Chairman	1.9759%	\$25,077.18
Minority Appropriations Chairman	1.9759%	\$25,077.18
Majority Caucus Secretary	1.9759%	\$10,326.27
Minority Caucus Secretary	1.9759%	\$10,326.27
Majority Caucus Policy Chairman	1.9759%	\$10,326.27
Minority Caucus Policy Chairman	1.9759%	\$10,326.27
Majority Caucus Administrator	1.9759%	\$10,326.27
Minority Caucus Administrator	1.9759%	\$10,326.27

W. RUSSELL FABER,
Chief Clerk
Senate of Pennsylvania
ROGER NICK,
Chief Clerk
House of Representatives

[Pa.B. Doc. No. 06-2298. Filed for public inspection November 22, 2006, 9:00 a.m.]

Recent Actions during the 2006 Regular Session of the General Assembly

The following is a summary of recent actions of the General Assembly during the 2006 Regular Session.

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
2006 GENERAL ACTS OF REGULAR SESSION ENACTED—ACT 133 through 150					
133	Oct 31	HB2001	PN4759	60 days	Price Gouging Act—enactment
134	Nov 1	HB0700	PN4887	Immediately*	Public Officers (65 Pa.C.S.)—lobbying disclosure
135	Nov 1	SB0862	PN2218	Immediately	Amusements (4 Pa.C.S.) and Crimes Code (18 Pa.C.S.)—omnibus amendments
136	Nov 2	HB2699	PN4886	Immediately*	Insurance Company Law of 1921—omnibus amendments
137	Nov 9	HB0469	PN4847	Immediately	Pennsylvania Election Code—date of application for absentee ballot, voting by absentee electors, canvassing of official absentee ballots and limiting contributions by partnerships, limited partnerships and limited liability companies

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
138	Nov 9	HB0552	PN4879	Immediately*	Fiscal Code—authority to invest or reinvest certain moneys, unclaimed property, property held by courts and public officers and agencies and notice and publication of lists
139	Nov 9	HB1112	PN4821	60 days	Crimes Code (18 Pa.C.S.) and Judicial Code (42 Pa.C.S.)—corrupt organizations, trafficking in persons, authorizing interception of wire, electronic or oral communications, sentencing for trafficking of persons and criminal forfeiture
140	Nov 9	HB1902	PN4662	60 days	Municipal Waste Planning, Recycling and Waste Reduction Act—sunset for recycling fee and for performance grants for municipal recycling programs
141	Nov 9	HB2090	PN2880	60 days	Game and Wildlife Code (34 Pa.C.S.)—powers of director of Pennsylvania Game Commission
142	Nov 9	HB2185	PN4817	Immediately	County Code—excluded provisions, required financial reporting and assessments of signs and sign structures
143	Nov 9	HB2447	PN3982	Immediately	Judicial Code (42 Pa.C.S.)—collection of restitution, reparation, fees, costs, fines and penalties and sexual offenders registration information on the Internet
144	Nov 9	HB2639	PN4878	120 days	Clinical Laboratory Act—glomerular filtration rate testing
145	Nov 9	HB2667	PN4848	60 days	Housing Authorities Law—powers of authority and mixed-use projects
146	Nov 9	HB2670	PN4849	180 days	Domestic Relations Code (23 Pa.C.S.)—grounds for involuntary termination of parental rights, mandatory reporting of substance abuse births, release of information in confidential reports in child protective services, citizen review panels and reports
147	Nov 9	HB2738	PN4760	Immediately*	Workers' Compensation Act—schedule of compensation, enforcement of standards, processing of claims, Workers' Compensation Appeal Board, assignment of claims to referees, counsel fees and Uninsured Employers Guaranty Fund
148	Nov 9	SB0592	PN2044	Immediately	Education (24 Pa.C.S.)—administrative duties of Public School Employees Retirement Board
149	Nov 9	SB1262	PN1877	60 days	Fish and Boat Code (30 Pa.C.S.)—chemical testing to determine amounts of alcohol or controlled substances, operating watercraft under the influence of alcohol or controlled substance and aggravated assault by watercraft while operating under influence
150	Nov 9	SB1266	PN2085	60 days	Military and Veterans Code (51 Pa.C.S.)—leaves of absence

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
2006 VETOES OF REGULAR SESSION OF BILLS—VETO 009 through 012					
009	Nov 3	HB0236	PN1949	60 days	Regulatory Review Act—proposed regulations, legislative intent and procedure for review
010	Nov 9	HB2202	PN4285	60 days	Public Welfare Code—home infusion therapy availability to all eligible recipients
011	Nov 9	HB2282	PN4869	Immediately*	Tax Reform Code of 1971—imposition of hotel occupancy tax and classes of income in personal income tax
012	Nov 9	SB0157	PN2206	Immediately	Local Tax Enabling Act—local services taxes, emergency and municipal services taxes and occupational privilege taxes

*denotes an effective date with exceptions

Effective Dates of Statutes

The effective dates specified above for laws and appropriation acts were contained in the applicable law or appropriation act. Where no date is specified or where the effective date specified is prior to the date of enactment, the effective date is 60 days after final enactment except for statutes making appropriations or affecting budgets of political subdivisions. See 1 Pa.C.S. §§ 1701—1704 (relating to effective dates of statutes).

Advance Copies of Statutes

Section 1106 of Title 1 of the *Pennsylvania Consolidated Statutes* provides that the prothonotaries of each county shall file advance copies of statutes in their offices for public inspection until the *Laws of Pennsylvania* are generally available. Section 2406(h) of The Administrative Code of 1929 provides that the Department of General Services shall distribute advance sheets of the *Laws of Pennsylvania* to each law judge of the courts, to every county and public library of this Commonwealth and to each member of the General Assembly. These copies shall be furnished without charge. The Department shall also mail one copy of each law enacted during any legislative session to any person who pays to it the sum of \$20.

Requests for annual subscriptions for advance copies of statutes should be sent to the State Bookstore, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, accompanied by a check or money order in the sum of \$20, payable to the "Commonwealth of Pennsylvania."

ROBERT W. ZECH, Jr.,
Director
Legislative Reference Bureau

[Pa.B. Doc. No. 06-2299. Filed for public inspection November 22, 2006, 9:00 a.m.]

COMMISSION ON SENTENCING

Meetings Scheduled

The Commission on Sentencing announces the following public meetings to be held at The Union League of Philadelphia, 140 S. Broad Street, Philadelphia, PA 19102:

Tuesday, December 5, 2006	Dinner and Policy Committee Meeting	6:30 p.m.
Wednesday, December 6, 2006	Quarterly Commission Meeting	9:00 a.m.

MARK H. BERGSTROM,
Executive Director

[Pa.B. Doc. No. 06-2300. Filed for public inspection November 22, 2006, 9:00 a.m.]

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Order Amending Rules 1910.13-1 and 1910.13-2; No. 467 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 8th day of November, 2006, Rules 1910.13-1 and 1910.13-2 of the Pennsylvania Rules of Civil Procedure are amended as follows.

This order shall be processed in accordance with Pa. R.J.A. 103(b) and shall be effective on February 6, 2007.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.13-1. Failure or Refusal to Appear Pursuant to Order of Court. Bench Warrant.

(a) If a party fails to appear at a conference and/or hearing as directed by order of court, the court may issue a bench warrant for the arrest of the party if it finds

(1) following a hearing on the record that the party had actual notice that the party was **[required]** ordered to attend the conference and/or hearing, or

(2) upon the affidavit of a hearing officer or conference officer that

(i) the order of court scheduling the conference and/or hearing was served by ordinary mail with the return address of the domestic relations section appearing thereon, that the mail was not returned to the domestic relations section within fifteen days after mailing, and that, at a date after the order of court was mailed, the United States Postal Service has verified that mail for the party was being delivered at the address to which the court order was mailed; or

(ii) the party signed a receipt indicating acceptance of a copy of the court order; or

(iii) an employee of the court handed a copy of the order to the party; or

(iv) a competent adult handed a copy of the court order to the party, and filed an affidavit of service.

Official Note: See Rule 76 for the definition of "competent adult."

(b) The request for a bench warrant shall be made by the domestic relations office within sixty days following the party's failure to appear. The request shall be in the form provided by Rule 1910.13-2(b), and shall include the hearing officer or conference officer's certification that the party has not appeared for any domestic relations matter involving the same parties since the date the party failed to appear.

(c) Upon appearance in court by a party on the matter underlying the bench warrant, the bench warrant shall be

vacated forthwith and the notice shall be given to all computer networks into which the bench warrant has been entered.

(d) [The bench warrant shall direct that if the court is unavailable at the time of the party's arrest, the party shall be lodged in the county jail until such time as court is opened for business. The authority in charge of the county jail must promptly notify the sheriff's office and the director of the domestic relations section that defendant is being held pursuant to the bench warrant. Under no circumstances shall the party remain in the county jail longer than seventy-two hours prior to hearing.] When a bench warrant is executed, the case is to proceed in accordance with the following procedures.

(1) When an individual is arrested pursuant to a bench warrant, he or she shall be taken without unnecessary delay for a hearing on the bench warrant. The hearing shall be conducted by the judicial officer who issued the bench warrant, or, another judicial officer designated by the president judge or by the president judge's designee to conduct bench warrant hearings. As used in this rule, "judicial officer" is limited to the common pleas court judge who issued the bench warrant, or common pleas court judge designated by the president judge or by the president judge's designee to conduct bench warrant hearings.

(2) In the discretion of the judicial officer, the bench warrant hearing may be conducted using two-way simultaneous audio-visual communication.

(3) When the individual is arrested in the county of issuance, and the bench warrant hearing cannot be conducted promptly after the arrest, the individual shall be lodged in the county jail pending the hearing. The authority in charge of the county jail promptly shall notify the sheriff's office and the director of the domestic relations section that the individual is being held pursuant to the bench warrant.

(4) When the individual is arrested outside the county of issuance, the authority in charge of the county jail in the arresting county promptly shall notify the proper authorities in the county of issuance that the individual is being held pursuant to the bench warrant.

(5) The bench warrant hearing shall be conducted without unnecessary delay after the individual is lodged in the jail of the county of issuance of that bench warrant. The individual shall not be detained without a hearing on the bench warrant longer than 72 hours, or the close of the next business day if the 72 hours expires on a non-business day.

(6) At the conclusion of the bench warrant hearing following the disposition of the matter, the judicial officer immediately shall vacate the bench warrant.

(7) If a bench warrant hearing is not held within the time limits in paragraph (d)(5), the bench warrant shall expire by operation of law.

Explanatory Comment—1994

In 1988, Section 4342 of the Domestic Relations Code, 23 Pa.C.S. § 4342, was amended to require establishment of procedures for expedited contempt in support. Those procedures are set forth in new Rules 1910.13-1, 1910.13-2, and 1910.21-1 through 1910.21-7.

Former Rule 1910.13 provided for the issuance of a bench warrant for failure of a person to obey a court order other than an order for support. It is replaced with new Rule 1910.13-1 which sets forth detailed procedures for the issuance of a bench warrant, and new Rule 1910.13-2 which provides the associated forms. The new rules apply only to a party who fails to appear at a support conference or hearing as directed by an order of court.

An individual arrested pursuant to a bench warrant can be incarcerated for a period not to exceed seventy-two hours prior to hearing as set forth in new Rule 1910.13-1(d). Under the old rules, if the court was unavailable at the time of arrest, the individual could not be held. Therefore, law enforcement officials were unable to execute bench warrants in the evenings or on weekends, when their efforts were most likely to be successful. By limiting the possible period of incarceration to seventy-two hours, new Rule 1910.13-1(d) balances the need to bring parties before the court with the desire to avoid lengthy pre-hearing detention. Bail can be set by the court where appropriate, providing additional protection for the respondent.

[Former Rule 1910.21 is replaced by new Rules 1910.21 through 1910.21-7. New Rule 1910.21-1 replaces the notice to appear before the court with a court order, thus eliminating the need for two essentially identical documents attached to a single petition. It also eliminates the old requirement that a copy of the support order underlying the contempt petition and an "official statement" of support arrearages be attached to the petition. Instead, the petition need only set forth the amount of the arrearages, as well as any other allegations which constitute the alleged failure to comply with the support order. As with a support complaint, an answer is permitted, but not required, unless specially ordered by the court.

Former Rule 1910.21(c) provided for service of a contempt petition only by regular mail. If the respondent failed to appear for the conference or hearing, the matter had to be continued for personal service or issuance of a bench warrant, sometimes creating lengthy delays. New Rule 1910.21-1(d) permits service of the contempt petition by first class mail. If the respondent fails to appear, the domestic relations section can request issuance of a bench warrant after certifying that the order was not returned by the post office within fifteen days, and that the postal authorities verified that the party was receiving mail at the address to which the order was sent on a date after the order was mailed. Thus, under the new rule, service can be accomplished with relative ease and little expense, but also with reasonable certainty that the respondent actually received notice of the proceedings.

New Rule 1910.21-1 addresses situations both where the payor is chronically a few dollars short, or a few days late by requiring that contempt proceedings be initiated when arrearages in any amount have existed for fifteen days.

The procedures for expedited contempt after service of the petition are set forth in new Rules 1910.21-2 through 1910.21-7. Pursuant to new Rule 1910.21-2, the respondent can be required to attend a conference, or can go directly before a judge for hearing, if the court permits. In all cases where the respondent does not go directly before a judge, there is an office conference as set forth in new Rule 1910.21-3. If an agreement is reached, the court may then enter the order without hearing on the basis of the conference officer's recommendation. If no agreement is reached, the matter proceeds as described in new Rule 1910.21-4 or, if an individual county adopts it by local rule, as set forth in new Rule 1910.21-5.

If no agreement is reached, new Rule 1910.21-4 requires the conference officer to prepare a summary of the conference. Upon consideration of the conference summary, the court may enter an order without hearing the parties. Either party has the right to file a written request for a de novo hearing within ten days after the order is mailed. If the court does not enter an order within five days, a de novo hearing is automatically scheduled before the court. The contempt order is stayed if either party demands a de novo hearing. The hearing de novo must be held no later than seventy-five days after the date the petition for contempt was filed. The time limitation is for the benefit of the plaintiff, and is intended to ensure speedy resumption of support payments.

New Rule 1910.21-5 provides the alternative procedure where no agreement is reached at the office conference. At the conclusion of a conference, the hearing officer must file a report containing a proposed order and the hearing officer's recommendations. If either party files exceptions within ten days, the court must either hear argument on the exceptions or hold a hearing de novo within seventy-five days. If no exceptions are filed within ten days, the court may enter an order on the basis of the hearing officer's report.

New Rule 1910.21-4 makes clear that a respondent cannot be incarcerated without a full evidentiary hearing before a judge. The court's order committing the respondent to jail must name the conditions that the respondent must fulfill in order to be released.

Pursuant to new Rule 1910.21-7, motions for post trial relief are not permitted to be filed to any order entered under new Rules 1910.21-1 through 1910.21-6.]

Explanatory Comment—1999

The rules of civil procedure governing service of original process and other legal papers have used the term "competent adult." In certain circumstances, the term has been used with the restrictive language "who is not a party to the action."

The Supreme Court of Pennsylvania has amended Definition Rule 76 by adding the following definition: "competent adult" means an individual eighteen years of age or older who is neither a party to the action nor an employee or a relative of a party." In view of this new definition, the rules of civil procedure which used the term "competent adult who is not a party to the action" have been amended by deleting as unnecessary the restrictive language "who is not a party to the action."

These rules using the term "competent adult" will be governed by the new definition. The rules which used the term "competent adult" without the restrictive language have been amended by deleting the word "competent," thus continuing to permit service by an adult without further restriction.

Explanatory Comment—2006

Beginning in 2006, bench warrants issued for failure to obey a court order to appear in a support matter will be available through the Judicial Network ("JNET") system. JNET expands the capacity of law enforcement officers throughout the commonwealth to be informed of outstanding bench warrants issued by both the criminal and civil courts. The Supreme Court of Pennsylvania has promulgated new Pa.R.Crim.P. 150, effective August 1, 2006, which sets forth the procedure related to criminal bench warrants. The amendments to Rule 1910.13-1 and 1910.13-2 track the new criminal procedural rule so that bench warrant procedures will be uniform throughout the commonwealth. For additional information see the Criminal Procedural Rules Committee's Final Report explaining new Pa.R.Crim.P. 150, published with the promulgation order at 36 Pa. B. 184 (January 14, 2006).

Rule 1910.13-2. Form of Request for Bench Warrant and Supporting Affidavit. Form of Bench Warrant.

(a) Request for a bench warrant pursuant to Rule 1910.13-1 shall be in substantially the following form and shall be attached to the Bench Warrant form set forth in subdivision (b) of this rule:

[CAPTION]

REQUEST FOR BENCH WARRANT AND SUPPORTING AFFIDAVIT

1. _____ did not appear for a conference and/or hearing in the Court of Common Pleas of _____ County on the _____ day of _____, 20____, which was scheduled by an order of court compelling this person's appearance, a copy of which is attached to this request.

2. The party received the order of court scheduling the conference and/or hearing in the following manner:

☐ (a) The order of court (i) was served upon the party by ordinary mail with the return address of the court thereon; (ii) the mail was not returned to the court within fifteen (15) days after mailing; and (iii) at a date after the order of court was mailed, the United States Postal Service has verified that mail for the party was being delivered at the address to which the court order was mailed.

☐ (b) The party signed a receipt indicating acceptance of the court order.

☐ (c) An employee of the court handed a copy of the court order to the party. The employee's affidavit of service is attached.

☐ (d) A competent adult handed a copy of the court order to the party. The adult's affidavit of service is attached.

3. ☐ This request for Bench Warrant is made within sixty days following the party's failure to appear for the conference and/or hearing; and

☐ I have reviewed the records of the Court and the Domestic Relations Office concerning this case, and attest that the party has not appeared for any domestic rela-

tions matter involving the same parties since the date upon which the party failed to appear in violation of the attached order of court.

4. In my capacity as hearing officer or conference officer, I request that the attached Bench Warrant be issued against the party named on account of the party's failure to appear for a scheduled conference and/or hearing in violation of an order of court.

[5. I recommend that bail in this matter be set as follows:

☐ **No bail.**

☐ **Bail to be set in the amount of _____.**

☐ **Bail to be determined by the magisterial district judge.**

Note: The following information should be supplied where the magisterial district judge is given discretion in setting bail.]

The records of the Domestic Relations Section show that:

☐ the party owes support arrearages in the amount of \$ _____.

☐ the party has failed to appear for _____ hearings relating to this case.

I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

DATE: _____ NAME/OFFICIAL TITLE _____

(b) The Bench Warrant entered by a court pursuant to Rule 1910.13-1 shall be in substantially the following form, and shall be attached to the Request for Bench Warrant form set forth in subdivision (a) of this rule:

[CAPTION]

BENCH WARRANT

AND NOW, this _____ day of _____, 20____, the Sheriff of _____ County, or any constable, or police officer, or other law enforcement officer is hereby ordered to take _____, residing at _____, into custody for appearance before this Court.

This bench warrant is issued because it appears that the (plaintiff) (defendant) has failed to appear, after notice, before the court for a scheduled conference and/or hearing.

We command you, the arresting officer, forthwith to convey and deliver the party into the custody of the Court of Common Pleas of _____ County, at

_____, _____, (city)

Pennsylvania, for a hearing.

DESCRIPTIVE INFORMATION

Social Security # _____ Sex _____ D.O.B. _____ Age _____

Height _____ Weight _____ Race _____ Eyes _____ Hair _____

Distinguishing features (scars, tattoos, facial hair, disability, etc.) _____

Alias _____

Telephone # _____

You are further commanded that if the court is unavailable, the party may be held in the County Jail until the

court is opened for business, at which time the party shall be promptly conveyed and delivered into the custody of the court at

_____, _____,
(address) (city)

Pennsylvania, for hearing.

The authority in charge of the county jail shall notify the sheriff's office and the director of the domestic relations section forthwith that the party is being held pursuant to the bench warrant.

Under no circumstances may the party be held in the county jail of the county that issued this bench warrant for more than seventy-two hours [prior to hearing] or the close of the next business day if the 72 hours expires on a non-business day. See Pa.R.Crim.P 150(A)(5).

Bail in this matter shall be set as follows:

☐ No bail.

☐ Bail to be set in the amount of _____.

[☐ Bail to be determined by the magisterial district judge.]

Official Note: Standards for setting bail are set forth in Rule of Criminal Procedure 525.

BY THE COURT: _____
JUDGE

Explanatory Comment—2005

Act 207-2004 amended numerous titles of the Pennsylvania Consolidated Statutes changing the title of "district justice" to "magisterial district judge." The amendments to Rule 1910.13-2 reflect the change in title.

[Pa.B. Doc. No. 06-2301. Filed for public inspection November 22, 2006, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CHS. 1910 AND 1920]

Order Amending Rules 1910.11, 1910.27, 1920.31, 1920.33 and 1920.54; No. 466 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 8th day of November, 2006, Rules 1910.11, 1910.27, 1920.31, 1920.33 and 1920.54 of the Pennsylvania Rules of Civil Procedure are amended as follows.

This order shall be processed in accordance with Pa. R.J.A. 103(b) and shall be effective on February 6, 2007.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.11. Office Conference. Subsequent Proceedings. Order.

* * * * *

(c) At the conference, the parties shall furnish to the officer true copies of their most recent federal income tax returns, their pay stubs for the preceding six months, verification of child care expenses and proof of medical coverage which they may have or have available to them. In addition, they shall provide copies of their [income and expense statements] **Income and Expense Statements** in the [form] forms required by Rule 1910.27(c), completed as set forth below.

(1) For cases which can be determined according to the guideline formula, the [income and expense statement need show only income and extraordinary] **Income Statement must be completed and the Expense Statement at Rule 1910.27(c)(2)(A) should be completed if a party is claiming unusual needs and unusual fixed expenses.**

(2) For cases which are decided according to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), the [entire income and expense statement] **Income Statement and the Expense Statement at Rule 1910.27(c)(2)(B) must be completed.**

* * * * *

Explanatory Comment—1994

The domestic relations office conference provided by Rule 1910.11 constitutes the heart of the support procedure. There are two primary advantages to the inclusion of a conference. First, in many cases the parties will agree upon an amount of support and a final order will be prepared, to be entered by the court, thus dispensing with a judicial hearing. Second, those cases which do go to hearing can proceed more quickly because the necessary factual information has already been gathered by the conference officer.

Subdivision (a)(2) prohibits certain officers of the court from practicing family law before fellow officers of the same court. These officers are the conference officer who is an attorney (Rule 1910.11), the hearing officer (Rule 1910.12), and the standing or permanent master who is employed by the court (Rule 1920.51). The amendments are not intended to apply to the attorney who is appointed occasionally to act as a master in a divorce action.

Subdivision (e)(3) makes clear that even if the parties agree on an amount of support, the conference officer is still empowered to recommend to the court that the agreement be disapproved. This provision is intended to protect the destitute spouse who might out of desperation agree to an amount of support that is unreasonably low or which would in effect bargain away the rights of the children. The officer's disapproval of the agreement serves to prevent an inadequate order being entered unwittingly by the court.

The provision for [a temporary] an interim order in subdivision [(g)(2)] (f) serves two purposes. First, it ensures that the obligee will receive needed support for the period during which the judicial determination is sought. Second, it eliminates the motive of delay in seeking a judicial determination.

Because the guidelines are income driven, the trier of fact has little need for the expense information required in the [income and expense statement] **Income and Expense Statement**. Therefore in guideline cases, the rule no longer requires that expense information be provided. If a party feels that there are expenses so extraordinary that they merit consideration by the trier of

fact, that party is free to provide the information. In cases decided according to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), living expenses are properly considered, and therefore must be presented on the [income and expense statement] Income and Expense Statement.

Explanatory Comment—1995

Rule 1910.11(e) is amended to eliminate the need for a party to request a copy of the conference summary.

[In conformity with the amendment of Pa.R.C.P. 236, subdivision (f) is amended to require that the parties be served with a copy of the order, rather than notice that it has been filed. In addition, subdivision (f) is amended to require the court to enter an interim order on the basis of the conference summary, expediting the commencement of support payments. The language of subdivisions (g) and (i) is also changed to conform with the amended language of subdivision (f).]

Because the court is required to enter a guideline order on the basis of the conference officer's recommendation, there is no need for (g)(2), which provided for a hearing before the court where an order was not entered within five days of the conference. It is eliminated accordingly.

Pursuant to subdivision (g), support payments are due and owing under the interim order which continues in effect until the court enters a final order after the hearing de novo. The provision for an interim order serves two purposes. First, it ensures that the obligee will receive needed support for the period during which the judicial determination is sought. Second, it eliminates the motive [in] of delay in seeking a judicial determination. Therefore, the plaintiff and the dependent children are not prejudiced by allowing the court sixty days, rather than the original forty-five, in which to enter its final order.

Explanatory Comment—2006

The time for filing a written demand for a hearing before the court has been expanded from ten to twenty days. The purpose of this amendment is to provide ample opportunity for litigants and counsel to receive notice of the entry of the order, to assure commonwealth-wide consistency in calculation of time for filing and to conform to applicable general civil procedural rules.

The amendments reflect the separated Income Statement and Expense Statements in Rule 1910.27(c).

Rule 1910.27. Form of Complaint. Order. Income **Statements** and Expense [Statement] **Statements**. Health Insurance Coverage Information Form. Form of Support Order. Form Petition for Modification.

* * * * *

(b) The order to be attached at the front of the complaint set forth in subdivision (a) shall be in substantially the following form:

(Caption)
ORDER OF COURT

You, _____, defendant, are ordered to appear at _____ before _____, a conference officer of the Domestic Relations Section, on the _____ day of _____, 20 _____, at _____ M., for a conference, after which the officer may recommend that an order for support be entered against you. You are further ordered to bring to the conference

(1) a true copy of your most recent Federal Income Tax Return, including W-2s, as filed,

(2) your pay stubs for the preceding six months,

(3) the Income **Statement** and the **appropriate** Expense Statement, **if required**, attached to this order, completed as required by Rule 1910.11(c),

(4) verification of child care expenses, and

(5) proof of medical coverage which you may have, or may have available to you.

If you fail to appear for the conference or to bring the required documents, the court may issue a warrant for your arrest and/or enter an interim support order. If paternity is an issue, the court shall enter an order establishing paternity.

THE APPROPRIATE COURT OFFICER MAY ENTER AN ORDER AGAINST EITHER PARTY BASED UPON THE EVIDENCE PRESENTED WITHOUT REGARD TO WHICH PARTY INITIATED THE SUPPORT ACTION.

Date of Order: _____ J.

YOU HAVE THE RIGHT TO A LAWYER, WHO MAY ATTEND THE CONFERENCE AND REPRESENT YOU. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS [OFFICE] OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

(Name)

(Address)

(Telephone Number)

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of _____ County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the court. You must attend the scheduled conference or hearing.

(c) The [income and expense statement] **Income and Expense Statements** to be attached to the order shall be in substantially the following form:

(1) Income Statement. This form must be filled out in all cases.

_____ v. _____ No. _____

THIS FORM MUST BE FILLED OUT

(If you are self-employed or if you are salaried by a business of which you are owner in whole or in part, you must also fill out the Supplemental Income Statement which appears [**on the last page of this Income and Expense Statement**] below.)

(Name)

(PACSES Number)

I verify that the statements made in this Income [**and Expense**] Statement are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

INCOME [**AND EXPENSE**] STATEMENT OF

Date: _____

Plaintiff or Defendant

INCOME

Employer: _____

Address: _____

Type of Work: _____

Payroll Number: _____

Pay Period (weekly, biweekly, etc): _____

Gross Pay per Pay Period \$ _____

Itemized Payroll Deductions:

Federal Withholding \$ _____

[**Social Security**] **FICA**

Local Wage Tax _____

State Income Tax _____

Mandatory Retirement _____**Union Dues** _____[**Savings Bonds** _____**Credit Union** _____**Life Insurance** _____]

Health Insurance _____

Other (specify) _____

Net Pay per Pay Period: \$ _____

Other Income:

	Week	Month (Fill in Appropriate Column)	Year
Interest	\$ _____	\$ _____	\$ _____
Dividends	_____	_____	_____
Pension Distributions	_____	_____	_____
Annuity	_____	_____	_____
Social Security	_____	_____	_____
Rents	_____	_____	_____
Royalties	_____	_____	_____
[Expense Account	_____	_____	_____
Gifts	_____	_____	_____]
Unemployment Comp.	_____	_____	_____
[Workmen's] Workers Comp.	_____	_____	_____
Employer Fringe Benefits	_____	_____	_____
Other _____	_____	_____	_____
Total	\$ _____	\$ _____	\$ _____
TOTAL INCOME		\$ _____	

[**EXPENSES****Home****Mortgage/rent** \$ _____**Maintenance** _____**Utilities** _____**Electric** _____**Gas** _____**Oil** _____**Telephone** _____**Water** _____**Sewer** _____

Monthly **Yearly**
(Fill in Appropriate Column)

\$ _____

Employment					
Public transportation	\$ _____	\$ _____	\$ _____		
Lunch	_____	_____	_____		
Taxes					
Real Estate	\$ _____	\$ _____	\$ _____		
Personal property	_____	_____	_____		
Income	_____	_____	_____		
Insurance					
Homeowners	\$ _____	\$ _____	\$ _____		
Automobile	_____	_____	_____		
Life	_____	_____	_____		
Accident	_____	_____	_____		
Health	_____	_____	_____		
Other	_____	_____	_____		
Automobile					
Payments	\$ _____	\$ _____	\$ _____		
Fuel	_____	_____	_____		
Repairs	_____	_____	_____		
Medical					
Doctor	\$ _____	\$ _____	\$ _____		
Dentist	_____	_____	_____		
Orthodontist	_____	_____	_____		
Hospital	_____	_____	_____		
Medicine	_____	_____	_____		
Special Needs (glasses, braces, orthopedic devices)	_____	_____	_____		
Education					
Private school	\$ _____	\$ _____	\$ _____		
Parochial school	_____	_____	_____		
College	_____	_____	_____		
Religious	_____	_____	_____		
Personal					
Clothing	\$ _____	\$ _____	\$ _____		
Food	_____	_____	_____		
Barber/hairdresser	_____	_____	_____		
Credit payments					
Credit card	_____	_____	_____		
Charge account	_____	_____	_____		
Memberships	_____	_____	_____		
Loans					
Credit Union	\$ _____	\$ _____	\$ _____		
_____	_____	_____	_____		
_____	_____	_____	_____		
_____	_____	_____	_____		
Miscellaneous					
Household help	\$ _____	\$ _____	\$ _____		
Child care	_____	_____	_____		
Papers/books/magazines	_____	_____	_____		
Entertainment	_____	_____	_____		
Pay TV	_____	_____	_____		
Vacation	_____	_____	_____		
Gifts	_____	_____	_____		
Legal fees	_____	_____	_____		
Charitable contributions	_____	_____	_____		
Other child support	_____	_____	_____		
Alimony payments	_____	_____	_____		
Other					
_____	\$ _____	\$ _____	\$ _____		
_____	_____	_____	_____		
Total Expenses	\$ _____	\$ _____	\$ _____		

PROPERTY OWNED

	Description	Value	H	Ownership* W	J
Checking accounts	_____	\$ _____	_____	_____	_____
Savings accounts	_____	_____	_____	_____	_____
Credit Union	_____	_____	_____	_____	_____

	Description	Value	H	Ownership* W	J
Stocks/bonds	_____	_____	_____	_____	_____
Real Estate	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____
	Total	\$ _____			

INSURANCE

	Company	Policy No.	H	Coverage* W	C
Hospital	_____	_____	_____	_____	_____
Blue Cross	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____
Medical	_____	_____	_____	_____	_____
Blue Shield	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____
Health/Accident	_____	_____	_____	_____	_____
Disability Income	_____	_____	_____	_____	_____
Dental	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____

*H=Husband; W=Wife; J=Joint; C=Child

SUPPLEMENTAL INCOME STATEMENT

(a) This form is to be filled out by a person (check one):

- ☐ (1) who operates a business or practices a profession, or
- ☐ (2) who is a member of a partnership or joint venture, or
- ☐ (3) who is a shareholder in and is salaried by a closed corporation or similar entity.

(b) Attach to this statement a copy of the following documents relating to the partnership, joint venture, business, profession, corporation or similar entity:

- (1) the most recent Federal Income Tax Return, and
- (2) the most recent Profit and Loss Statement.

(c) Name of business: _____

Address and Telephone Number: _____

(d) Nature of business

(check one)

- ☐ (1) partnership
- ☐ (2) joint venture
- ☐ (3) profession
- ☐ (4) closed corporation
- ☐ (5) other

(e) Name of accountant, controller or other person in charge of financial records: _____

(f) Annual income from business: _____

(1) How often is income received? _____

(2) Gross income per pay period: _____

(3) Net income per pay period: _____

(4) Specified deductions, if any: _____

(2) Expense Statements. An Expense Statement is not required in cases which can be determined pursuant to the guidelines unless a party avers unusual needs and expenses that may warrant a deviation from the guideline amount of support pursuant to Rule 1910.16-5 or seeks an apportionment of expenses pursuant to Rule 1910.16-6. (See Rule 1910.11(c)(1)). Child support is calculated under the guidelines based upon the net incomes of the parties, with additional amounts ordered as necessary to provide for child care expenses, health insurance premiums, unreimbursed medical expenses, mortgage payments and other needs, contingent upon the obligor's ability to pay. The Expense Statement in subparagraph (A) below shall be utilized if a party is claiming that he or she has unusual needs and unusual fixed expenses that may warrant deviation or adjustment in a case determined under the guidelines. In cases which must be determined pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), because the parties' combined net monthly income exceeds \$20,000 per month, the parties must complete the Expense Statement in subparagraph (B) below.

(A) Guidelines Expense Statement. If the combined monthly net income of the parties is \$20,000 or less, it is not necessary to complete this form unless a party is claiming unusual needs and expenses that may warrant a deviation from the guideline amount of support pursuant to Rule 1910.16-5 or seeks an apportionment of expenses pursuant to Rule 1910.16-6. At the conference, each party must provide receipts or other verification of expenses claimed on this statement. The Guidelines Expense Statement shall be substantially in the following form.

EXPENSE STATEMENT OF

(Name) (PACSES Number)

I verify that the statements made in this Expense Statement are true and correct. I understand that

false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: _____
Plaintiff or Defendant

	Weekly	Monthly (Fill in Appropriate Column)	Yearly
Mortgage (including real estate taxes and homeowner's insurance) or Rent	\$ _____	\$ _____	\$ _____
Health Insurance Premiums	_____	_____	_____
Unreimbursed Medical Expenses:			
Doctor	_____	_____	_____
Dentist	_____	_____	_____
Orthodontist	_____	_____	_____
Hospital	_____	_____	_____
Medicine	_____	_____	_____
Special Needs (glasses, braces, orthopedic devices, therapy)	_____	_____	_____
Child Care	_____	_____	_____
Private school	_____	_____	_____
Parochial school	_____	_____	_____
Loans/Debts	_____	_____	_____
Support of Other Dependents:			
Other child support	_____	_____	_____
Alimony payments	_____	_____	_____
Other: (Specify)	_____	_____	_____
Total	\$ _____	\$ _____	\$ _____

(B) *Melzer Expense Statement.* No later than five business days prior to the conference, the parties shall exchange this form, along with receipts or other verification of the expenses set forth on this form. Failure to comply with this provision may result in an appropriate order for sanctions and/or the entry of an interim order based upon the information provided.

EXPENSE STATEMENT OF

(Name) (PACSES Number)

I verify that the statements made in this Expense Statement are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: _____
Plaintiff or Defendant

EXPENSES	MONTHLY TOTAL	MONTHLY CHILDREN	MONTHLY PARENT
HOME			
Mortgage or Rent	_____	_____	_____
Maintenance	_____	_____	_____
Lawn Care	_____	_____	_____
2nd Mortgage	_____	_____	_____

EXPENSES	MONTHLY TOTAL	MONTHLY CHILDREN	MONTHLY PARENT
UTILITIES			
Electric	_____	_____	_____
Gas	_____	_____	_____
Oil	_____	_____	_____
Telephone	_____	_____	_____
Cell Phone	_____	_____	_____
Water	_____	_____	_____
Sewer	_____	_____	_____
Cable TV	_____	_____	_____
Internet	_____	_____	_____
Trash/Recycling	_____	_____	_____
TAXES			
Real Estate	_____	_____	_____
Personal Property	_____	_____	_____
INSURANCE			
Homeowners/Renters	_____	_____	_____
Automobile	_____	_____	_____
Life	_____	_____	_____
Accident/Disability	_____	_____	_____
Excess Coverage	_____	_____	_____

EXPENSES	MONTHLY TOTAL	MONTHLY CHILDREN	MONTHLY PARENT
Long-Term Care	_____	_____	_____
AUTOMOBILE			
Lease or Loan Pay- ments	_____	_____	_____
Fuel	_____	_____	_____
Repairs	_____	_____	_____
Memberships	_____	_____	_____
MEDICAL			
Medical Insurance	_____	_____	_____
Doctor	_____	_____	_____
Dentist	_____	_____	_____
Hospital	_____	_____	_____
Medication	_____	_____	_____
Counseling/ Therapy	_____	_____	_____
Orthodontist	_____	_____	_____
Special Needs (glasses, etc.)	_____	_____	_____
EDUCATION			
Tuition	_____	_____	_____
Tutoring	_____	_____	_____
Lessons	_____	_____	_____
Other	_____	_____	_____
PERSONAL			
Debt			
Service	_____	_____	_____
Clothing	_____	_____	_____
Groceries	_____	_____	_____
Haircare	_____	_____	_____
Memberships	_____	_____	_____
MISCELLANEOUS			
Child Care	_____	_____	_____
Household Help	_____	_____	_____
Summer Camp	_____	_____	_____
Papers/Books/ Magazines	_____	_____	_____
Entertainment	_____	_____	_____
Pet Expenses	_____	_____	_____
Vacations	_____	_____	_____
Gifts	_____	_____	_____
Legal Fees/ Prof. Fees	_____	_____	_____
Charitable Contributions	_____	_____	_____
Children's Parties	_____	_____	_____
Children's Allowances	_____	_____	_____
Other Child Support	_____	_____	_____
Alimony Payments	_____	_____	_____
TOTAL MONTHLY EXPENSES	_____	_____	_____
	* * *	* *	

Explanatory Comment—1994

The support complaint and [**expense statement**] **Income and Expense Statements** contain a verification which states that the documents are subject to the penalties of the Crimes Code relating to unsworn falsification to authorities. A notary public is not needed.

Explanatory Comment—2006

Rule 1910.27(c) is amended to separate income and expense information and to elicit the expense information relevant in cases that fall within the guidelines, as well as those that do not. In cases which can be determined under the guidelines, no expense information need be provided unless a party is claiming unusual needs and expenses that may warrant a deviation pursuant to Rule 1910.16-5 or an apportionment of expenses pursuant to Rule 1910.16-6. If a party is claiming such expenses, the form at subsection (c)(2)(A) should be submitted. A separate expense form for cases in which the parties' combined monthly net income exceeds \$20,000 is set forth at subsection (c)(2)(B).

Rule 1910.11(c) was amended, effective in March 1995, to provide that only income and extraordinary expenses need be shown on the Income and Expense Statement in cases which can be determined pursuant to the guidelines. The Explanatory Comment—1994 explained the rationale for the amendment.

Nevertheless, because space for both income and expense information was provided on the same form Income and Expense Statement, parties often needlessly expended time and effort to provide expense information that was not relevant at the conference. The amendments are intended to clarify and simplify the submission of expense information.

CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

Rule 1920.31. Joinder of Related Claims. Child and Spousal Support. Alimony. Alimony Pendente Lite. Counsel Fees. Expenses.

(a)(1) Within thirty days after the service of the pleading or petition containing a claim for child or spousal support, alimony, alimony pendente lite or counsel fees, costs and expenses, each party shall file a true copy of the most recent federal income tax return, pay stubs for the preceding six months [**and**], a completed [**income and expense statement**] **Income Statement** in the form required at Rule 1910.27(c)(1) and a completed **Expense Statement** in the [**manner and**] form required by [**Rules 1910.11 and**] Rule 1910.27(c)(2)(B).

(2) If a party fails to file the documents as required by subdivision (a)(1), the court on motion may make an appropriate order under Rule 4019 governing sanctions.

(3) [**When**] In those counties in which the prothonotary's office does not automatically forward a divorce complaint containing claims for support or alimony pendente lite to the domestic relations section or other appropriate office, if a claim for support or alimony pendente lite is filed as a count in a divorce rather than as a separate action, the award shall be retroactive to the date [**of the written demand for hearing unless the order states otherwise**] the

moving party delivers a copy of the complaint to the domestic relations section or other appropriate office with a demand for hearing. [If a demand for hearing appears conspicuously on the front of the divorce pleading, support or alimony pendente lite shall be awarded retroactive to the date of filing of that pleading and the matter shall be set promptly for hearing.

Official Note: At the time a hearing is demanded on the issue of support, a copy of the divorce pleading which contains that count must be delivered to the domestic relations section.]

* * * * *

[Explanatory Note—1983

Subdivision (a) as originally promulgated required each party to file a completed income and expense statement within thirty days after service of the pleading or petition containing a related claim for relief. That requirement remains unchanged. However, the rule is conformed to Support Rule 1910.11(c) by also requiring each party to file within the same thirty day period a copy of his or her most recent income tax return and the pay stubs for the preceding six months.

New subdivision (a)(2) incorporates by reference Discovery Rule 4019 governing sanctions. When there is a failure to file the documents required by subdivision (a)(1), the broad spectrum of sanctions which is available under Rule 4019(c) will permit the court to impose the sanction appropriate to the facts of the case.

Explanatory Comment—1991

The Divorce Code of 1980 has been modified by two recent Acts of Assembly. First, the Divorce Code was codified as part of the Pennsylvania Consolidated Statutes by Act 1990-206. Second, the Divorce Code was substantially amended by Act 1988-13. Many of the rules of civil procedure covered by Recommendation 5 have been amended as a result of this legislation.

I. Codification. Old Rules 1920.1 through 1920.92 were promulgated in 1980 to implement the then recently enacted Divorce Code. The old rules contain many references to the Divorce Code which was enacted as part of the Unconsolidated Statutes, 23 P. S. § 101 et seq.

Act 206 of 1990, effective March 19, 1991, repealed the Divorce Code as enacted in 1980 and re-enacted it as Part IV of the Domestic Relations Code, 23 Pa.C.S. § 3101 et seq. Part IV of the Domestic Relations Code continues to be known as the Divorce Code. All statutory references in the new rules refer to the Divorce Code as it is now codified.

For more than ten years, the term "Section 201(c) or (d)" divorce has meant a "no-fault" divorce. Under the new codification, the grounds for a no-fault divorce will be found in Section 3301(c) and (d) of the Divorce Code, 23 Pa.C.S. § 3301(c) and (d). This is one example of the revisions to the divorce rules necessitated by the codification. These revisions merely correct obsolete references and effect no change in practice or procedure. The Committee is developing a proposal to review all of the domestic relations rules to include the new statutory references.

II. Spousal Support. Section 3104 (formerly Section 301) of the Divorce Code, which enumerates the various claims that may be joined in an action of divorce, was amended by Act 1988-13 to include "spousal support." Old Rule 1920.31, governing the joinder of related claims, has been amended to include the reference to spousal support in conformity with the Divorce Code as amended.

III. Living Separate and Apart. Section 3301(d) (formerly Section 301(d)) of the Divorce Code, providing for a no-fault divorce where the marriage is irretrievably broken and the parties have lived separate and apart, was amended by Act 1988-13 to reduce the waiting period from three years to two years. Old Rule 1920.72(c), governing the form of the plaintiff's affidavit, makes reference to this three year period. New Rule 1920.72(c) refers to the two year period of separation.

Old Rule 1920.42(a), governing the procedure in a divorce under Section 3301(d) of the Divorce Code, referred to "the plaintiff" filing an affidavit. Old Rule 1920.72(c) provides the form of the "Plaintiff's" affidavit. However, the Divorce Code uses the phrase "an affidavit has been filed." Consequently, there is no reason why a defendant may not file the affidavit to initiate the procedure for entering the decree. Old Rules 1920.42(a)(2) and (c)(2) and 1920.72(c) and (d) have been revised to allow filing of the affidavit by either party.

IV. Establishing Grounds for Divorce. New Section 3301(e) (formerly Section 201(e)) of the Divorce Code was added by Act 1988-13, and provides that, if grounds are established under the no-fault provisions of Sections 3301(c) or (d), "the court shall grant a divorce without requiring a hearing on any other grounds." A note has been added to old Rule 1920.51 referring to this provision.

V. Inventory; Pre-trial Statement. Section 3505(b) (formerly Section 403(b)) of the Divorce Code was enacted in 1980 provides for "an inventory and appraisal of all property owned or possessed at the time the action was commenced." Old Rule 1920.33 was adopted to implement this provision. The rule did not work very well. The inventory and appraisal were seldom filed within sixty days after a claim for determination and distribution of property is filed, as required by the rule. The old rule further required that the parties use the date the action was commenced as the valuation date. In most instances, the date the action was commenced was irrelevant for valuation purposes.

Section 3505(b)(1) of the Divorce Code, as amended by Act 1988-13, requires that the inventory and appraisal contain a list of property owned or possessed by either or both parties as of both the date of separation and a date thirty days prior to the date of the hearing on equitable distribution. There are three problems with this Divorce Code provision. First, the date of separation is frequently unclear and is itself a disputed issue in the action. Second, an inventory which contains values and liabilities as of a date thirty days prior to trial must be filed very late in the proceedings. Third, even if the date of separation is undisputed, a valuation as of that date is frequently irrelevant.

New Rules 1920.33 and 1920.75 rescind old Rules 1920.33 and 1920.75, and suspend Section 3505(b) as

amended by Acts 1988-13 and 1990-206. New Rule 1920.33 substitutes the devices of an inventory and a pre-trial statement. New Rule 1920.75 provides a form for the inventory.

New Rule 1920.33(a) requires that each party file an inventory within ninety days after the filing of a claim for the distribution of property. The inventory must include "all property owned or possessed at the time the action was commenced," including all marital property, as well as all non-marital property. At this point in the action, a valuation of the property need not be provided.

New Rule 1920.75 provides for a form of inventory which is consistent with the requirements of new Rule 1920.33(a). For the most part, the only information that is required is a description of the property involved in the claim and the identification of the owners. The form of inventory retains the checklist of property found in the old rule.

New Rule 1920.33(b) requires each party to file and serve a pre-trial statement within the time specified by court order or the written direction of the master, or, if none, at least sixty days before the hearing on the claim for distribution of property. Eleven subparagraphs specify the content of the pre-trial statement. Preparation of the pre-trial statement requires the parties to prepare their cases well before trial, thus facilitating the presentation of evidence at the trial, and enhancing the prospect of early settlement.

Section 3505(b)(2) of the Divorce Code provides for the inventory and appraisal to contain a valuation of the property as of three dates: the date of acquisition, the date of separation and the date thirty days prior to the date of the hearing on equitable distribution. New Rule 1920.33(b)(1) does not specify a date for valuation. It provides that the pre-trial statement shall include a list of assets specifying "(i) the marital assets, their value, the date of valuation . . . and (ii) the non-marital assets, their value, the date of valuation . . .". It is incumbent upon each party to show why property should or should not be valued as of a certain date. Consequently, each party needs to provide the value as of the date he or she intends to prove at the hearing. Three valuations are generally unnecessary.

Section 3505(b)(3) of the Divorce Code provides for the inventory and appraisal to contain a list of liabilities of either or both parties as of thirty days prior to the date of the hearing on equitable distribution. New Rule 1920.33(b)(6) requires the pre-trial statement to include the current expense statement required in an action for support if the party filing the statement intends to offer testimony concerning his or her expenses. Subparagraph (10) of the new rule requires that the pre-trial statement includes "a list of marital debts including the amount of each debt as of the date of separation" and specified additional information concerning that debt. New Rule 1920.33 is therefore more comprehensive than the Divorce Code because it requires a current expense statement and a history of marital debt.

New Rule 1920.33(c) provides for sanctions as authorized by Discovery Rule 4019(c) for failure to file either the inventory or the pre-trial statement.

New Rule 1920.33(d) provides two evidentiary sanctions relating only to the pre-trial statement. Under subparagraph (1), a party may be barred from offering any testimony or introducing any evidence with regard to a matter not included in the statement. Subparagraph (2) provides that a party may not offer testimony or introduce evidence which "is inconsistent with or which goes beyond the fair scope of the information in the pre-trial statement."

The evidentiary sanctions set forth in new Rule 1920.33(d) do not apply to the inventory. Because the inventory is filed within ninety days after a claim has been made for equitable distribution, there may be insufficient time for the parties to learn of all of the property which may be subject to that claim. Consequently, the rule contemplates that any omissions will be corrected in the pre-trial statement.

Act 1988-13 added new Section 3502(e) (formerly Section 401(k)) to the Divorce Code relating to enforcement of an order or an agreement of equitable distribution. New Rule 1920.33(e) states that orders for equitable distribution entered pursuant to the Divorce Code may be enforced as provided by the rules governing actions for support and divorce, and under the Divorce Code. Remedies available for enforcement for equitable distribution orders are set forth in Divorce Code Sections 3323(b) (formerly Section 410(b)) and 3505(a) (formerly 403(a)), as well as Section 3502(e).

It should be noted that 23 Pa.C.S. § 3105(a) (formerly Section 401.1(a)) states that an agreement is enforceable by any means available pursuant to the Divorce Code for enforcement of an order, as though the agreement were an order of court, except as otherwise provided in the agreement. Thus, although new Rule 1920.33(e) refers only to enforcement of orders, it also applies to enforcement of agreements.

Explanatory Comment—1994

In its opinion in *McKeown v. McKeown*, 612 A.2d 1060 (Pa. Super. 1992), the court indicates that spousal support cannot be converted automatically to alimony pendente lite. However, in many cases there is a need for alimony pendente lite after the decree is entered, just as there is spousal support before. Because of the recent change in Rule 1910.16-1, which states that the amount of alimony pendente lite is determined according to the guidelines, there is little difference between the two. Although the entitlement defense continues to be available, if the dependent spouse is already receiving spousal support, the amended rule permits automatic conversion to alimony pendente lite upon entry of the decree.

Explanatory Comment—1995

New subdivision (a)(3) is added because, unlike a separate action for support, a count in a divorce which requires support is often filed in the interest of preserving every possible claim rather than because either party wishes to have that claim heard. Where a support claim is not pursued for months, or even years, allowing retroactivity to the date of filing in accordance with Rule 1910.17 can create massive and unjust arrearages.

This amendment permits retroactivity only for the period of time during which the support claim has been actively pursued. Thus, if a demand for support hearing appears on the front of a divorce pleading, support is available retroactive to the date of filing. However, where the demand does not appear on the front of the divorce pleading, retroactivity will be allowed only from the date upon which the hearing is eventually demanded.]

Rule 1920.33. Joinder of Related Claims. Distribution of Property. Enforcement.

* * * * *

(b) Within the time required by order of court or written directive of the master or, if none, at least sixty days before the scheduled hearing on the claim for the determination and distribution of property, each party shall file and serve upon the other party a pre-trial statement. The pre-trial statement shall include the following matters, together with any additional information required by special order of the court:

(1) a list of assets, which may be in chart form, specifying:

(i) the marital assets, their value, the date of the valuation, whether any portion of the value is non-marital, and any liens or encumbrances thereon[,]; and

(ii) the non-marital assets, their value, the date of the valuation, and any liens or encumbrances thereon;

(2) the name and address of each expert whom the party intends to call at trial as a witness. A report of each expert witness listed shall be attached to the pre-trial statement. The report shall describe the witness's qualifications and experience and state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion;

(3) the name, address and a short summary of the testimony of each person, other than the party, whom the party intends to call at trial as a witness;

(4) a list of all of the exhibits which the party expects to offer in evidence, each containing an identifying mark. Any exhibits that do not exceed three pages shall be attached to the pre-trial statement, and any exhibits which exceed three pages shall be described;

(5) the party's gross income from all sources, each payroll deduction, and the party's net income, including the party's most recent state and federal income tax returns and pay stubs;

(6) if the party intends to offer any testimony as to his or her expenses, [**a current expense statement**] **an Expense Statement** in the form required by [**the practice and procedure governing an action in support**] **Rule 1910.27(c)(2)(B);**

* * * * *

(e) An order distributing property under Section 3502 of the Divorce Code may be enforced as provided by the rules governing actions for support and divorce, and in the Divorce Code.

[Official Note: See, inter alia, Section 3323(b) of the Divorce Code relating to enforcement of the rights of any party under a decree, Section 3505(a) relating to injunction against disposition of property pending suit, and Section 3502(e) providing

remedies for failure to comply with an order of equitable distribution or the terms of an agreement between the parties.]

Explanatory Comment—1994

23 Pa.C.S. § 3105(a) states that an agreement is enforceable by any means available pursuant to the Divorce Code for enforcement on an order, as though the agreement were an order of court, except as otherwise provided in the agreement. Thus, although Rule 1920.33 refers only to enforcement of orders, it also applies to enforcement of agreements.

Rule 1920.54. Hearing by Master. Report. Related Claims.

(a) If claims for child support, alimony pendente lite, or counsel fees and expenses have been referred to a master pursuant to Rule 1920.51(a), the master's report shall contain separate sections captioned "Child Support," "Alimony Pendente Lite," or "Counsel Fees and Expenses" as appropriate. The report may be in narrative form stating the reasons for the recommendation and shall include a proposed order stating:

(1) the amount of support or alimony pendente lite[,];

(2) by and for whom it shall be paid[,]; and

(3) the effective date of the order.

The [**income and expense statements**] **Income and Expense Statements** shall be attached to the report.

* * * * *

[Pa.B. Doc. No. 06-2302. Filed for public inspection November 22, 2006, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1915]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 83

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, January 19, 2007 directed to:

Patricia A. Miles, Esquire
 Counsel, Domestic Relations Procedural Rules Committee
 5035 Ritter Road, Suite 700
 Mechanicsburg, Pennsylvania 17055
 FAX (717) 795-2175
 E-mail: patricia.miles@pacourts.us

Deleted material is bold and bracketed. New material is bold.

*By the Domestic Relations
 Procedural Rules Committee*

NANCY P. WALLITSCH, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1915. ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

Rule 1915.8. Physical and Mental Examination of Persons.

(a) The court may order the [child or a party] **child(ren) and/or either and/or both parties** to submit to **and fully cooperate in** an evaluation by an appropriate expert or experts. The order, **which shall be substantially in the form set forth in Rule 1915.18**, may be made upon the court's own motion or [on] **upon** the motion of a party with reasonable notice to the person to be examined, [and] **or by agreement of the parties. The order** shall specify the place, manner, conditions and scope of the examination and the person or persons by whom it [is to] **shall be made and to whom distributed. In entering an order directing an evaluation pursuant to this rule, the court shall consider all appropriate factors including the following, if applicable:**

(1) **the allocation of the costs, including insurance coverage, if any, attendant to the undertaking of the evaluation and preparation of the resultant report and court testimony of any appointed expert;**

(2) **the execution of appropriate authorizations to facilitate the examination;**

(3) **any deadlines imposed regarding the completion of the examination and payment of costs;**

(4) **the production of any report and of underlying data to counsel and/or any unrepresented party upon the completion of the examination;**

(5) **whether the expert shall be deemed an independent court-appointed expert and, if so, whether such expert shall be subject to cross-examination by all counsel and any unrepresented party.**

(b) [Where the expert is appointed upon the court's motion] **Unless otherwise directed by the court, the expert shall deliver to the court [and], to the attorneys of record[, or to the parties if there are no attorneys of record] and to any unrepresented party, copies of [a detailed written report] any reports arising from the evaluation setting out the findings, results of all tests made, diagnosis and conclusions [within the time provided in subdivision (d) of this rule]. No reports shall be filed of record. Any**

report which is prepared at the request of a party, with or without a court order, and upon which a party intends to rely at trial, must be delivered to the court and the other party at least thirty days before trial.

(c) [Where the expert evaluation is obtained upon motion of a party, the expert shall deliver to that party a detailed written report setting out the findings, results of all tests made, diagnosis and conclusions within the time provided in subdivision (d) of this rule.

(d) Each expert's report shall be filed and/or served

(1) **within sixty days of the entry of the order where the county pays the expert, or**

(2) **within sixty days after full payment of the expert fee(s) where one or both parties are directed to pay.**

(e) **The court may assess the cost of the examination and report on any or all of the parties or as otherwise permitted by law.**

(f) **The order shall require that payment be made within twenty days of the date of the order.**

(g) [If a party refuses to obey an order of court made under subdivision (a) of this rule, the court may make an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing in evidence designated documents, things or testimony, or from introducing evidence of physical or mental condition, or such other order as is just. **The willful failure or refusal of a party to comply with an order entered pursuant to this rule may also give rise to a finding of contempt and the imposition of such sanctions as may be deemed appropriate by the court, including, but not limited to, an adverse inference against the non-complying party.**

[(h)] (d) A petition for contempt alleging failure to comply with an order entered pursuant to subdivision (a) of this rule shall be treated in an expedited manner.

[(i) Any report which is prepared at the request of a party, with or without a court order, and upon which a party intends to rely at trial, must be served upon the court and the opposing party thirty days before trial.

Explanatory Comment—1981

A child custody determination may often involve consideration of the mental and physical condition of both the parties to the proceeding and the child. Rule 1915.8 provides a procedure for the mental and physical examination of persons, similar to that provided by Discovery Rule 4010. One major difference between this rule and the Discovery Rule is the express statement that "the order may be made upon the court's own motion or on motion of a party . . ."

The power of the court to order a physical or mental examination on its own motion is a concrete example of the direction which custody law has taken. As expressed by Judge Lawrence W. Kaplan, "The Child Advocate in Custody Litigation," in PBI publication No. 1980-140, p. 86, *supra*:

The Superior Court, in exercising its actual adjudicative responsibility and perceived administrative stewardship over the custody law

of Pennsylvania, has taken the unprecedented step of requiring the trial judge to develop the record where it is deficient for the parties' failure to fully explore the relevant issues. *Lewis v. Lewis*, 267 Pa. Super. 235, 406 A.2d 781 (1979). By imposing this requirement, Pennsylvania's custody law challenges bench and bar in a fashion unmatched in other areas of the law.

This challenge was noted by the editors of the *Pennsylvania Family Lawyer*, Vol. 1, No. 1, p. 3 (January 1980):

An increased substantial burden is being placed upon judges and attorneys to develop a custody case to its fullest potential to insure that a proper award will be made. There is an affirmative duty to develop a record and to conduct a thorough investigation with the aid of outside agencies.

The reason for the challenge imposed by the Superior Court is clearly stated by the *Pennsylvania Family Lawyer*, p. 7:

Custody cases are not akin to most other cases in the adversary process. The focus is not on parental rights but unrepresented children's rights.

The Superior Court has placed litigants to a custody dispute on notice that the court is bound to explore all facets of the action to determine the best interest of the child. Physical and mental condition of the parties and of the child is but one facet to be explored.

There are two additional points to be noted. First, subdivision (b) provides that the examining physician or psychologist is to deliver a copy of his report to both the court and the parties. Second, subdivision (b) provides sanctions which may be imposed upon a party who refuses to obey an order to submit to an examination.

Explanatory Comment—1994

In order to make a proper determination in a child custody case, the court often requires information which can only be supplied by an expert evaluation of the parties and the subject child. Rule 1915.8 provides a procedure for expert evaluation of persons. Unlike the civil discovery rule (R.C.P. 4010), Rule 1915.8 provides that expert evaluations may be ordered upon the court's own motion as well as the motion of a party.

The proposed revisions to Rule 1915.8 add definite time limits during which the cost of evaluations must be paid, the evaluation themselves completed, and the reports provided to the court and counsel. The time limits are imposed in response to complaints of unreasonable delays in the completion of evaluations. The rule also provides a range of sanctions which the court may impose for failure to comply with an order directing evaluations, and provides that a petition for contempt for failure to comply with an order entered under this rule is to be treated in an expedited fashion.]

Explanatory Comment—2007

This rule addresses the process for any number of expert evaluations a court may order in a custody case, including, but not limited to, physical, mental health, custody or drug and alcohol evaluations,

and/or home studies. Since the initial promulgation of this rule in 1981, the frequency of utilizing professionals as expert witnesses in child custody litigation has increased considerably. Evaluations have served as a means to provide the court with a full and complete record and to facilitate settlement of the litigation.

The proposed revisions to Rule 1915.8 are intended to afford the trial court and the parties a more flexible and case-sensitive means of determining the scope and parameters of a physical and/or mental examination, including deadlines, costs, underlying data, etc. In many instances, the previous sixty-day deadline was impractical and ignored. While some cases demanded that the evaluation be completed in less than 60 days, others demanded far more time than that. The revisions to this rule also specifically permit the trial court to draw an adverse inference from one party's failure to comply with an order pursuant to this rule.

Rule 1915.18. Form of Order Directing Expert Examination and Report.

The order of court directing expert evaluation in a custody matter pursuant to Rule 1915.8 shall be in substantially the following form:

(Caption)
ORDER OF COURT

AND NOW, this ____ day of _____, [19] 20 __, it is hereby ORDERED, that:

[1) Home evaluations will be conducted by _____. The cost of the home evaluations shall be \$ _____.]

2) Psychological evaluations will be conducted by _____. The cost of the psychological evaluation shall be \$ _____, but may increase if the issues are especially complex or numerous individuals must be interviewed.

Note: Alternatives are provided for paragraph 3) to accommodate local practice.

3) The cost of the evaluations shall be borne by _____, subject to the Court's right to allocate later. Payment to the evaluator(s) shall be made within twenty (20) days of the date of this order. Upon receipt of payment, the evaluator(s) shall contact the parties for appointments. The evaluations shall be completed and delivered to the (Court) (counsel of record or the parties, if they are unrepresented) within sixty days of receipt of full payment.

OR

3) The cost of the evaluations shall be borne by the county, subject to reimbursement by _____. Upon receipt of a copy of this order, the evaluator(s) shall contact the parties for appointments. The evaluations shall be completed and delivered to the (Court) (counsel of record or the parties, if they are unrepresented) within sixty days of the date of this order.

4) Upon completion of the evaluation reports, either party may schedule a (CONCILIATION/PRETRIAL CONFERENCE) before the undersigned.]

1. The evaluator ☐ will be _____ or ☐ will be selected by the parties.

2. The evaluator shall conduct a

- ☐ Physical Evaluation
- ☐ Psychological Evaluation
- ☐ Custody Evaluation
- ☐ Drug and/or Alcohol Evaluation
- ☐ Home Study
- ☐ Other (Specify) _____

3. The evaluator ☐ shall ☐ shall not make specific recommendations for legal and physical custody. If the evaluator makes specific recommendations, the evaluator shall state the specific reasons for the recommendations.

4. The parties shall cooperate fully with the evaluator on a timely basis, including retaining the evaluator upon appropriate terms, scheduling appointments, paying promptly, participating in all sessions and appropriate testing recommended by the evaluator and executing any reasonable consents relating to themselves and their children.

5. Both parties shall promptly cooperate to maximize the use of available insurance coverage and notify the other party of the result. The ☐ plaintiff ☐ defendant shall submit the costs to his or her insurance first. The cost of the unreimbursed portion of the evaluation shall preliminarily be allocated between the parties with the plaintiff paying _____ % and the defendant paying _____ % without prejudice to the ultimate apportionment of such costs by subsequent agreement of the parties or order of court.

6. The cost for the evaluator's time for depositions and/or testimony for hearing shall be ☐ allocated _____ % to the plaintiff and _____ % to the defendant or ☐ paid by the party seeking the testimony.

☐ 7. The evaluator may consult with and/or interview any person the evaluator believes can provide relevant information, including other experts and/or fact witnesses.

☐ 8. The evaluator may utilize the services of another qualified professional (e.g. to perform additional services) without court approval.

☐ 9. Subject to the applicable rules of evidence, the evaluator's file (including notes, exhibits, correspondence, test interpretations and, to the extent it is not a violation of copyright law, raw test data) shall promptly be made available to counsel for the parties.

☐ 10. Provided that the parties cooperate on a timely basis, the evaluator shall deliver his or her report to counsel for the parties, any unrepresented party, the guardian ad litem, if any, and to the court no later than _____ days prior to the first day of trial. The report shall not be filed of record.

☐ 11. Prior to and/or subsequent to the submission of the evaluator's written report, counsel for the parties shall not be permitted to communicate with the evaluator as to substantive issues, without the consent or direct participation of counsel for the other party.

☐ 12. The evaluator shall be deemed to be a court-appointed expert and therefore shall be subject to cross-examination by all counsel and any unrepresented party.

☐ 13. The evaluator shall be provided with a copy of this order.

☐ 14. The evaluator's report shall be considered confidential and shall not be inappropriately disseminated.

☐ 15. Other provisions:

FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY RESULT IN FINES, IMPRISONMENT OR OTHER SANCTIONS.

BY THE COURT:

J.

[Pa.B. Doc. No. 06-2303. Filed for public inspection November 22, 2006, 9:00 a.m.]

Title 25—LOCAL COURT RULES

BRADFORD COUNTY

Local Civil Rules 205.2(B), 206.4(C), 229 and 1301

Order

And Now, this 2nd day of November, 2006, the Court hereby adopts Bradford County Rules of Civil Procedure, to be effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

It is further ordered that the District Court Administrator shall send seven (7) certified copies of these rules to the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee, and one (1) copy to the *Bradford County Law Journal* for publication in the next issue of the *Bradford County Law Journal*.

It is further ordered that these local rules shall be kept continuously available in the Prothonotary's Office for public inspection and copying.

By the Court

JEFFREY A. SMITH,
President Judge

Local Rule 205.2(b)

1. Upon the filing of an action pursuant to the Pennsylvania Rules of Civil Procedure, including divorce and custody, a cover sheet in substantially the form specified in Subsection (b)3 of this rule shall be filed immediately in the office of court administration.

2. In the event any such action is filed pro se, the prothonotary shall provide a copy of the cover sheet form to the filing party and shall notify court administration to assure compliance with this rule.

3. The cover sheet shall be as follows:

IN THE COURT OF COMMON PLEAS OF BRADFORD COUNTY, PENNSYLVANIA

	:	Date Filed: _____
	:	Docket No. _____
	:	Related Cases _____
Plaintiffs	:	
vs.	:	Jury Trial Demanded <input type="checkbox"/> Yes <input type="checkbox"/> No
	:	Arbitration Case <input type="checkbox"/> Yes <input type="checkbox"/> No
	:	
Defendants	:	

Note: A civil action is to be listed for Arbitration unless (1) the amount in controversy exceeds \$5,000 exclusive of interest and costs or (2) the case involves title to real property

CIVIL/FAMILY COVER SHEET

CIVIL ACTION CASE TYPES

- Civil Action (assumpsit, trespass, equity)
- Professional Liability
- Medical Professional Liability
- Ejectment
- Quiet Title
- Replevin
- Mandamus
- Mortgage Foreclosure
- Other _____

APPEALS

- District Justice
- Zoning Board
- Drivers License Suspension
- Registration License
- Board of Assessment
- Other _____

<p>FAMILY COURT CASE TYPES</p> <p><input type="checkbox"/> Child Custody/Visitation</p> <p><input type="checkbox"/> Annulment</p> <p><input type="checkbox"/> Divorce</p> <p>Divorce Counts</p> <p><input type="checkbox"/> Child Custody/Visitation</p> <p><input type="checkbox"/> Equitable Distribution</p> <p><input type="checkbox"/> Other _____</p> <p>Plaintiff's DOB _____</p> <p>Defendant's DOB _____</p>	
---	--

Filed by: _____

Supreme Court ID No. _____

IMPORTANT: This form is not to be filed in the Prothonotary's Office, but should be taken directly to Court Administration for statistical and case management purposes immediately upon the filing of a new case or new petition/complaint (custody or divorce) in a family court case (It is not needed when filing petitions for special relief).

Local Rule 206.4(c)

D. If an answer is filed, the court, upon review, will determine whether a hearing or argument should be scheduled and will enter an order accordingly. **Concurrently with filing, counsel or any unrepresented party shall serve a time-stamped copy of the answer or objection upon the assigned judge.**

Local Rule 212.1

(a)(1) In any such civil action in which the damages sought exceed the jurisdictional limit for compulsory arbitration, any party may file a certification with the Prothonotary that the case is ready for trial. The Certification of Readiness shall be in substantially the following form:

IN THE COURT OF COMMON PLEAS OF BRADFORD COUNTY, PENNSYLVANIA		
_____		* CIVIL ACTION
Plaintiff		
vs.		* NO.
_____		* JURY _____
Defendant		NON-JURY _____

CERTIFICATION OF READINESS

I hereby certify pursuant to Bradford County Rule of Civil Procedure 212.1(a)(1) that the above-captioned case is ready for trial. All pleadings are closed; all witnesses are presently available to appear at trial; and discovery is complete, except for those depositions to be taken solely for the purpose of being presented at trial, such as the depositions of expert witnesses.

I further certify that immediately after filing, I will serve a time-stamped copy of this certification upon opposing counsel, any unrepresented party and the Court Administrator.

_____	_____
Print Name	Signature
_____	_____
_____	Representing
_____	_____
Address	
_____	_____
Telephone No.	Date

(a)(2) The term "ready for trial" means that

(a) the pleadings are closed

(b) witnesses are presently available to appear at trial; and

(c) discovery is complete, except for those depositions to be taken solely for the purpose of being presented at trial, such as the depositions of expert witnesses.

(b) Immediately after the Certification of Readiness is filed, a time-stamped copy of the Certification shall be served upon the court administrator, opposing counsel and any unrepresented party.

(c) Upon receipt of the Certification of Readiness, the court administrator shall schedule a pre-trial conference before the assigned judge, taking into consideration the deadlines for filing of the pre-trial statements which are set forth in Pa.R.C.P. 212(b)

Local Rule 229.

(a) Any party filing a discontinuance shall immediately serve the court administrator with a time-stamped copy.

Local Rule 1301. Cases For Submission

A. Compulsory arbitration as authorized by Section 7361 of the Judicial Code, 42 Pa.C.S.A. Section 101, et seq. shall apply to all civil cases, except actions in equity, where the amount in controversy, exclusive of interest and costs, shall be **thirty [twenty-five]** thousand dollars **(\$30,000.00) [\$25,000.00]** or less, including appeals from a civil judgment of a district justice. Such actions shall be submitted to and heard by a board of arbitration consisting of three attorneys.

[Pa.B. Doc. No. 06-2304. Filed for public inspection November 22, 2006, 9:00 a.m.]

SOMERSET COUNTY
Consolidated Rules of Court; No. 42 Miscellaneous
2006

Adopting Order

Now, this 31st day of October, 2006, it is hereby Ordered:

1. The following designated Somerset County Rule of Criminal Procedure 150 (Som.R.Crim.P. 150) Bench Warrants, a copy as follows is hereby adopted as a Rule of this Court, effective thirty (30) days after publication in *The Pennsylvania Bulletin*:

2. The Somerset County Court Administrator is directed to:

A. File seven (7) certified copies of this Order and the Rule with the Administrative Office of Pennsylvania Courts.

B. Distribute two (2) certified copies of this Order and the Rule, along with a diskette or CD, to the Legislative Reference Bureau for publication in *The Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order and the Rule with the Pennsylvania Criminal Procedural Rules Committee.

D. File proof of compliance with this Order in the docket for this Rule, which shall include a copy of each transmittal letter.

By the Court

JOHN M. CASCIO,
President Judge

Rules of Court

Bench Warrants.

Som.R.Crim.P. 150: Bench Warrants.

In a court case when a bench warrant is executed, the case is to proceed in accordance with the following procedures.

(1) When a defendant or witness is arrested pursuant to a bench warrant, he or she shall be taken without unnecessary delay for a detention hearing on the bench warrant. The hearing shall be conducted by the judicial officer who issued the bench warrant, or, another judicial officer if the judicial officer who issued the warrant is unavailable.

(2) In the discretion of the judicial officer, the bench warrant hearing may be conducted using two-way simultaneous audio-visual communication.

(3) When the individual is arrested in Somerset County, if the bench warrant hearing cannot be conducted

promptly after the arrest or the warrant was issued by a Judge of the Court of Common Pleas, the defendant or witness shall be lodged in the Somerset County Jail pending the hearing. The Warden promptly shall notify the Court Administrator and the District Attorney that the individual is being held pursuant to the bench warrant.

(4) When the individual is arrested outside Somerset County and has been lodged in the Somerset County Jail, the Warden promptly shall notify the Court Administrator and the District Attorney that the individual is being held pursuant to the bench warrant.

(5) The bench warrant hearing shall be conducted without unnecessary delay after the individual is lodged in the Somerset County Jail. The individual shall not be detained without a bench warrant hearing on that bench warrant longer than 72 hours, or the close of the next business day if the 72 hours expires on a non-business day.

(6) As used in this rule, "judicial officer" is limited to the magisterial district judge or common pleas court judge who issued the bench warrant, or the magisterial district judge or common pleas court judge designated by the president judge or by the president judge's designee to conduct bench warrant hearings.

(7) This Rule does not apply to warrants issued in parole and probation detention or revocation proceedings.

[Pa.B. Doc. No. 06-2305. Filed for public inspection November 22, 2006, 9:00 a.m.]

SOMERSET COUNTY

Consolidated Rules of Court; No. 53 Miscellaneous 2006

Adopting Order

Now, this 31st day of October, 2006, it is hereby Ordered:

1. The following designated Somerset County Rule of Judicial Administration 5000.4 (Som.R.J.A. 5000.4) Court Reporters is amended to read in its entirety, as reflected in revised Som.R.J.A. 5000.4, and is hereby adopted as a Rule of this Court, effective thirty (30) days after publication in *The Pennsylvania Bulletin*:

2. The Somerset County Court Administrator is directed to:

A. File seven (7) certified copies of this Order and the Rule with the Administrative Office of Pennsylvania Courts.

B. Distribute two (2) certified copies of this Order and the Rule, along with a diskette or CD, to the Legislative Reference Bureau for publication in *The Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order and the Rule with the Pennsylvania Civil Procedural Rules Committee.

D. File proof of compliance with this Order in the docket for this Rule, which shall include a copy of each transmittal letter.

By the Court

JOHN M. CASCIO,
President Judge

Rules of Court

Court Reporters

Som. R.J. A. 5000.4

A. An official Court reporter (hereinafter called reporter) shall be present at every session of Court, whether regularly scheduled or specially summoned, whenever or wherever held, as may be assigned by the Court.

B. The assigned reporter shall cause a record to be made of all proceedings in the matter before the Court, including voir dire and arguments of counsel in all cases, stenographically, or by other means if directed by the Court.

Note: See *Commonwealth v. Stewart*, 218 Pa. Superior 38.

C. In order to assure that proper coverage is provided when one of the Official Court Reporters cannot be present or a fourth judge is assigned, the following assignment rule will be applied. In the event that more judges are assigned than Official Reporters are available or one of the Official Court Reporters is unavailable because of vacation or illness, a per diem reporter shall be engaged by the Court Administrator. In the event that one of the Official Court Reporters becomes available no less than 24 hours before the beginning of the workday for which the per diem reporter has been engaged, the Official Court Reporter shall be assigned to perform the work and the per diem reporter shall be cancelled. When a per diem reporter is engaged, the Court Administrator shall arrange the assignments of all of the reporters to assure that assignments which will require preparation of numerous orders and transcripts will be given to the Official Court Reporters to avoid delay in processing of orders and transcripts.

D. In order to assure that transcripts and orders entered on the record are processed promptly and properly, these procedures are to be followed by the Official Court Reporters and any per diem reporter employed by the court:

1. All orders dictated in court are to be prepared as separate orders and not only as part of the transcript.

2. All orders and transcripts must be prepared and delivered to chambers within five (5) business days of the hearing or argument.

3. Per diem reporters are expected to familiarize themselves with the form and content of transcripts, orders and sentences prepared by our Official Court Reporters and to adhere to those standards.

4. Per diem reporters are expected to familiarize themselves with procedures for copying and distributing transcripts and orders and to assure that those procedures are implemented to assure the prompt delivery of documents to the proper recipient. In particular, per diem reporters are to assure that copies of orders which direct rescheduling of a proceeding are distributed to all appropriate recipients, including the Court Administrator.

5. Per diem reporters are required to leave with the Court Administrator's office or an Official Court Reporter a rough ASCII disk of the entire proceedings reported by the per diem reporter, and

all original exhibits from the proceedings reported. Copies of exhibits will be supplied to the per diem reporter to aid in preparation of a transcript if requested.

6. If anything occurs which would affect the ability of any reporter to adhere to these procedures, the Court Administrator must be notified promptly.

7. These procedures may not be waived or modified without the permission of the President Judge.

[Pa.B. Doc. No. 06-2306. Filed for public inspection November 22, 2006, 9:00 a.m.]

SOMERSET COUNTY

Consolidated Rules of Court; No. 54 Miscellaneous 2006

Adopting Order

Now, this 31st day of October, 2006, it is hereby Ordered:

1. The following designated Somerset County Rule of Civil Procedure 1301 (Som.R.C.P. 1301) Arbitration. Jurisdiction Limits, a copy of which follows, is hereby adopted as a Rule of this Court, effective thirty (30) days after publication in *The Pennsylvania Bulletin*:

2. The Somerset County Court Administrator is directed to:

A. File seven (7) certified copies of this Order and the Rule with the Administrative Office of Pennsylvania Courts.

B. Distribute two (2) certified copies of this Order and the Rule, along with a diskette or CD, to the Legislative Reference Bureau for publication in *The Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order and the Rule with the Pennsylvania Civil Procedural Rules Committee.

D. File proof of compliance with this Order in the docket for this Rule, which shall include a copy of each transmittal letter.

By the Court

JOHN M. CASCIO,
President Judge

RULES OF COURT

Arbitration

Som.R.C.P. 1301 Arbitration. Jurisdiction Limits.

All civil actions for the recovery of money or personal property shall first be submitted to arbitration before a board of three members of the Bar of this Court, except: (i) actions which involve title to real property, and (ii) actions in which the amount in controversy, exclusive of interest and costs, exceeds [**\$25,000.00**] **\$50,000.00**.

Note: See Judicial Code § 7361, 42 Pa.C.S.A. § 7361. The authorized arbitration limit was \$5,000.00 until increased to \$10,000.00 by Act No. 1980-38. The authorized limit was increased to \$25,000.00 by Act No. 1992-25. **The authorized arbitration limit was increased to \$50,000.00 by Act No. 2006-41.**

Regarding referral of replevin to arbitration, see explanatory note 1981 to Pa.R.C.P. 1301.

On arbitration limits, see *Goncher v. Brant*, 29 *Somerset Legal Journal*, 332, 340 (1974) and *Reffner v. Tipton*, No. 2, 30 *Somerset Legal Journal* 269 (1974).

[Pa.B. Doc. No. 06-2307. Filed for public inspection November 22, 2006, 9:00 a.m.]

SOMERSET COUNTY

Consolidated Rules of Court; No. 55 Miscellaneous 2006

Adopting Order

Now, this 31st day of October, 2006, it is hereby Ordered:

1. The following designated Somerset County Rule of Civil Procedure 208.3(a) (Som.R.C.P. 208.3(a)) Motions. Practice and Procedure, and is amended to read in its entirety, as reflected in revised Som.R.C.P. 208.3(a) is hereby adopted as a Rule of this Court, effective thirty (30) days after publication in *The Pennsylvania Bulletin*.

2. The Somerset County Court Administrator is directed to:

A. File seven (7) certified copies of this Order and the Rule with the Administrative Office of Pennsylvania Courts.

B. Distribute two (2) certified copies of this Order and the Rule, along with a diskette or CD, to the Legislative Reference Bureau for publication in *The Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order and the Rule with the Pennsylvania Civil Procedural Rules Committee.

D. File proof of compliance with this Order in the docket for this Rule, which shall include a copy of each transmittal letter.

By the Court

JOHN M. CASCIO,
President Judge

Rules of Court

Motions.

Som.R.C.P. 208.3(a) Motions. Practice and Procedure

A. Motions will be scheduled, argued, and decided:

1. At Motions Court, in accordance with the procedure specified in subparagraph B. of this Rule, if the motion is of the type permitted to be presented at Motions Court, or

2. By the filing of a scheduling praecipe according to the procedure, and in the form specified in subparagraph F. of this Rule, copies of which are available from the Prothonotary or Court Administrator, or

3. In the case of a motion for preliminary injunction or similar motions which require immediate date certain scheduling, by presentation to a judge in accordance with Motions [**Judge**] practice specified in subparagraph C. of this Rule, or

4. In the case of motions which are permitted to be presented ex parte, without prior notice of presentation and opportunity to be heard, pursuant to the provisions of subparagraph D. of this Rule, by presentation to [**a judge**] **the Administrative Judge of the Civil Divi-**

sion or the Administrative Judge of the Family Division in accordance with Motions [Judge] practice specified in subparagraph C. of this Rule, or

5. In the case of motions or petitions which, because of extraordinary and compelling circumstances, cannot be scheduled otherwise, and which must be heard upon short notice, by presentation to [a judge] the Administrative Judge in accordance with Motions Judge practice specified in subparagraph C. of this Rule.

B. Motions Court.

1. Civil Motions Court will be held before the designated [Motions] Administrative Judge of the Civil Division at 9:00 [a.m.] A.M. on [the first and third] each Wednesday[s] of every month, holidays excepted. Family Motions Court will be held before the designated Administrative Judge of the Civil Division at 9:00 A. M. on the first and third Tuesday of every month, holidays excepted.

2. A motion may be presented at Civil Motions Court when the issue raised, or relief requested, is:

a. To compel, limit or prohibit discovery, or to obtain a protective or confidentiality order with respect to discovery.

b. To permit the amendment of a pleading or joinder of an additional defendant.

c. To make a rule absolute or for similar default order, when, although required, timely answer to a motion or petition has not been filed.

[d. To compel counseling in divorce cases.]

[e.] d. To permit withdrawal as counsel.

[f.] e. Approval of settlement of a minor's claim or approval of settlement of wrongful death and survival actions.

[g.] f. Consolidation.

[h.] g. Objections to a scheduling praecipe.

3. A motion may be presented at Family Motions Court when the issue raised, or relief requested, is:

a. For the appointment of a Special Master;

b. A motion for the appointment of a Custody Investigator;

c. A motion to be excused from the payment of costs or to proceed in forma pauperis;

d. To compel counseling in divorce cases;

e. A motion for special relief;

f. Objections to a scheduling praecipe.

[3.] 4. At least [ten] five days before presentation, a copy of the motion shall be served upon all other counsel and unrepresented parties, and upon the [Court Administrator] Administrative Judge, together with a notice specifying the time and date of the Motions Court at which the motion will be presented.

[4.] 5. The [Court Administration] Administrative Judge shall maintain a list of motions with date and time of receipt. Only those motions which have been submitted in a timely manner to the [Court Administrator] Administrative Judge in accordance with these Rules will be heard. Motions will be heard by the

Court in the order of their submission to the [Court Administrator] Administrative Judge.

[5.] 6. The moving party shall file and serve an affidavit of service of the motion and notice prior to, or at the time of presentation. The motion will not be heard unless the notice requirements of this rule have been satisfied and an affidavit of service filed.

[6.] 7. Counsel and unrepresented parties are to confer prior to the presentation of any motion and are to attempt, in good faith, to reach amicable resolution of the issues involved. Good faith efforts toward amicable resolution shall be considered as a factor when determining whether or not the requested relief is appropriate, the propriety of sanctions, or in determining the exigency of circumstances, if relevant.

[7.] 8. At the time of presentation, the [presiding] Administrative Judge may enter an Order resolving the issues raised by the motion; schedule argument, hearing or other proceeding; issue a briefing schedule; or enter other appropriate Order.

[8.] 9. Presentation of motions at Motions Court is optional, and if the party chooses, the motion may be scheduled by scheduling praecipe for hearing or argument.

C. All unscheduled matters, including applications and requests, formal and informal, which may be presented to the [Motions] appropriate Administrative Judge under the provisions of subparagraph A. of this Rule, shall be filed and docketed, and then transmitted to Chambers or presented in open court to the [Motions] Administrative Judge [on duty at the time,] except in the following circumstances:

1. Emergency cases may be presented to any judge.

[2. Matters affecting cases formerly assigned to a judge other than the Motions Judge shall be presented to that other judge, but may in emergencies be presented to the Motions Judge when the assigned judge is absent.]

[3. Matters with which a judge other than the Motions Judge has special familiarity by reason of prior judicial acquaintance, significantly relevant to the matter at hand, may be presented to another judge.]

[4] 2. Matters in which [any judge] the Administrative Judge has been disqualified or declines to act shall be presented to [another judge] the President Judge.

[5] 3. Administrative and policy matters required by law or custom to be acted upon by the President Judge, or appropriate for the attention of the President Judge, shall be presented to the President Judge.

D. Ex parte orders in adversary proceedings.

1. Motions presented to the court in an adversary proceeding will not be considered ex parte, without prior notice of presentation and an opportunity to be heard, except in the following cases:

a. Motions for relief which are routinely granted as of course, on a presumption of assent, such as motions for appointment of legal counsel and guardians ad litem, and the like.

b. Motions affecting the issuance or service of initial papers upon another who is not yet subject to the jurisdiction of the court, such as applications for substituted service, extensions of time, and the like.

c. Motions for preliminary orders granting or scheduling a hearing thereon, or directing process or notice to bring the opponent before the court to answer.

d. Motions for stay orders in license suspension appeals.

e. Cases in which the adverse party has waived the opportunity to be heard or has consented to the requested action.

f. Cases in which there are special or compelling circumstances which the court finds justify ex parte action.

2. Prior notice of presentation of a motion to the court shall state the date, time and place of intended presentation and shall be accompanied by a copy of the motion and the proposed order.

3. In cases where an ex parte order is made, a copy of the motion and order shall be served promptly on the opponent and on all other parties, who may file a prompt application for reconsideration of the order.

4. In all cases where prior notice of presentation is required under statute or rule of court, the motion shall state that the requisite prior notice was given; the date, time and manner of giving notice; and the substance thereof. If the right to ex parte relief is based on the existence of special or compelling circumstances, the motion shall state such circumstances.

E. Continuances.

1. Motions for continuance must be made in writing or of record in open court, unless excused by the court for cause.

2. Absent exceptional circumstances, motions for continuance shall be presented no later than **[ten (10)] fifteen (15)** days before the date of the proceedings for which the continuance is requested. Thereafter, no motions for continuance will be granted except for substantial reasons which were not previously known or reasonably ascertainable.

3. The motion shall state whether or not the proceedings previously have been continued, and, if so, the number of prior continuances, with identification of the party upon whose motion each continuance was granted.

4. Absent extraordinary circumstances, a request for a continuance based on proceedings scheduled in another Court of Common Pleas will be granted only if the other court's scheduling order was issued before the order scheduling the proceedings for which the continuance is requested. If the motion is based on conflict with a matter scheduled in another Court of Common Pleas **[e], a copy of the scheduling order from the other Court of Common Pleas shall be attached to the motion.**

5. Motions for continuance of court cases shall be presented as follows:

a. When at a scheduled call of the list, to the presiding Judge.

b. When a case is on a current trial or argument schedule, to the assigned Judge.

c. In all other cases, **[Motions Judge practice] to the appropriate Administrative Judge.**

6. Continuances shall operate to effect rescheduling:

a. To a date certain or specific trial session if the **[Court] Administrative Judge or Presiding Judge** states a date certain or specific trial session in the continuance order.

b. In all other cases, only upon filing of a scheduling praecipe as provided in subparagraph F. of this Rule.

7. An order continuing a case "sec reg.," until the next available session, or in terms of similar generality, will not result in rescheduling, or placement on a new trial list.

8. Every motion for continuance shall specify the reasons for the request.

9. The moving party shall certify that prior notice of presentation of the motion has been given to opposing counsel and unrepresented parties.

10. Every motion for unopposed continuance, whether written or oral, shall be joined in by all other parties or counsel of record, or shall certify that all other parties or counsel have been notified of the presentation of the motion and join in or do not oppose the motion.

11. When a civil case is scheduled for pretrial conference, the motion for continuance shall clearly state whether it relates to pretrial conference, or to the trial, or both.

12. An approved form of continuance motion is set forth in subparagraph F. 14. of this Rule.

13. This Rule does not apply to continuances of trials before arbitrators which are governed by Som.R.C.P. 1303F.

14. Form of Continuance Motion.

[CIVIL CONTINUANCE REQUEST

_____)	IN THE COURT OF COMMON
Plaintiff)	PLEAS OF SOMERSET COUNTY,
)	PENNSYLVANIA
v.)	
)	
)	NO. ____ CIVIL 200 ____
)	
_____)	
Defendant)	

Scheduled before Judge _____ on _____ at _____ .
For (Type of proceeding): _____

REASON FOR REQUEST: (Attach extra sheet, if necessary) _____

NUMBER OF PRIOR CONTINUANCES: _____ by the plaintiff _____ by the defendant

NOTICE OF PRESENTATION OF THE MOTION HAS BEEN GIVEN TO OPPOSING COUNSEL AND UNREPRESENTED PARTIES.

REQUESTING ATTORNEY OR PARTY:

(Print) _____ Counsel for: _____

(Sign) _____

OPPOSING COUNSEL OR PARTY:

(Print) _____ Counsel for: _____

[] Joins In [] Does not object [] Opposes

OPPOSING COUNSEL OR PARTY:

(Print) _____ Counsel for: _____

[] Joins In [] Does not object [] Opposes

ORDER

AND NOW, this _____ day of _____, 200 __, the above Civil Continuance request is **GRANTED/DENIED** and the hearing/argument is continued. Hearing will be rescheduled upon the filing of a new scheduling praecipe by a party. Hearing is rescheduled for _____, __ .m., on __, 200__.

BY THE COURT:

_____]

CIVIL HEARING CONTINUANCE REQUEST

Plaintiff)
) IN THE COURT OF COMMON
) PLEAS OF SOMERSET COUNTY,
) PENNSYLVANIA
v.)
)
) NO. _____ CIVIL 200 ____
)
)
Defendant)

Scheduled before Judge _____, on _____
For _____

Reason For Request:

Number of prior continuances: _____ By
Plaintiff _____ By Defendant _____

NOTICE ☐ HAS ☐ HAS NOT BEEN GIVEN TO
OPPOSING COUNSEL OR PARTY

(Sign) _____ Counsel For: ____
Requesting Attorney or Party

(Sign) _____ Counsel For: ____
Responding Attorney or Party

☐ Joins In ☐ Does Not Object ☐ Opposes

ORDER

AND NOW, this _____ day of _____ 200__, the continuance request is ☐ GRANTED ☐ DENIED.

☐ Hearing to be rescheduled by scheduling praecipe.

☐ Hearing is rescheduled for _____ the _____ day of _____ 200__, at _____ M. in Courtroom No. ____ before Judge _____.

BY THE COURT:

_____ J.

F. Scheduling by Praecipe.

1. Those cases required to be scheduled by praecipe shall be scheduled only upon filing of a scheduling praecipe, substantially in the form set forth below in subparagraph F.6. of this Rule.

2. The praecipe and all issued copies thereof shall be signed by counsel of record or an unrepresented party.

3. The scheduling praecipe shall be filed as provided in the prescribed form of scheduling praecipe, and the praecipe and copies thereof shall be served promptly on other counsel and unrepresented parties in the case.

4. Upon receipt of a scheduling praecipe any party may object thereto as follows:

a. If the objection is to the assertion in the praecipe of readiness of the case for disposition by the court, the objection shall be made promptly to the court in accordance with Motions [**Judge**] practice on notice to other parties.

b. If the objection relates to any other assertion in the praecipe, such as time of scheduling, time required on the schedule, etc., the objecting party shall promptly file a counter praecipe stating only the matter corrected or changed.

5. If a party files a scheduling praecipe, knowing that the matter is not ready for disposition by the court, or knowing that the matters certified to in the scheduling praecipe are not true, the court may impose sanctions on the offending party. Sanctions may include assessment of reasonable counsel fees incurred by other parties as the result of such conduct, prohibition of additional discovery, or other appropriate order.

[6. Form of Scheduling Praecipe.

Plaintiff)
) IN THE COURT OF COMMON
) PLEAS OF SOMERSET COUNTY,
) PENNSYLVANIA
v.)
)
) NO. _____ CIVIL 200 ____
)
)
Defendant)

SCHEDULING PRAECIPE

I. This is a/an—

[] A. ARGUMENT CASE (Complete Part A below):

[] B. CIVIL TRIAL CASE (Complete Part B below):

[] C. CIVIL ARBITRATION CASE (Complete Part C below).

PART A (Argument Case):

1. Place the above case on an appropriate Argument Schedule for

[] Argument on _____ .
Nature of Proceeding

If I am the moving party, I CERTIFY that the required brief has been filed, and has been or will be served promptly.

—OR—

[] Hearing on _____ .
Nature of Proceeding

2. Type of scheduling requested:

[] a. *Sec reg* (At any date and time convenient to the Court to be fixed on the next available Argument Schedule to be issued).

—OR—

[] b. *Sec reg-date certain* (At a presently fixed date and time on an Argument Schedule to be issued).

—OR—

[] c. *Prompt* (At a presently fixed date and time on a schedule already issued).

d. If date certain or prompt scheduling is requested, state the reason (granted only for cause):

3. Estimated total schedule time required for presentation by all parties: _____ Minutes/Hours/Days.

4. a. If the matter listed in paragraph 1 above seeks scheduling for modification or enforcement of any: (i) criminal sentence or order of probation or parole, (ii) juvenile adjudication or disposition order, or (iii) any other order or decree of Court entered in adversary proceedings, state the name of the Judge who made the sentence, order or decree:

_____ J. If not applicable, so state.

b. If any Judge has previously heard argument or testimony on the specific matter to be scheduled, mentioned in paragraph 1 above, or has had significant prior judicial acquaintance with the controversy presented thereby, name the Judge:

_____ J. If not applicable, so state.

PART B. (Civil Trial Case):

1. Place the above case on the next issued Civil Trial List for

[] JURY TRIAL [] NONJURY TRIAL

PART C. (Civil Arbitration Case):

1. Schedule the above case for Arbitration Trial Hearing sec reg.

2. Estimated total time for presentation by all parties: _____ Minutes/Hours/Days

II. I CERTIFY that:

1. This case is ready for disposition by the Court.

2. The signed original of this praecipe and one signed copy thereof (for transmission to the administrator) have been or will be promptly filed to the case in the office of the court clerk; and a signed copy has been or will be promptly served upon each other counsel and upon each unrepresented party who has been served with initial process or pleading.

3. All prescheduling and pretrial procedures, including pleading and discovery, have been completed.

4. All parties, witnesses and counsel for the undersigned are expected to be available and present when the case is scheduled, barring unforeseeable events hereafter occurring. If any event hereafter occurs requiring continuance, a motion therefor will be promptly presented to the Court.

5. I have read and am acquainted with the local rules governing scheduling and court procedures.

III. REMARKS:

Signature

Type or print name of signer and party represented.

List of All Counsel and Unrepresented Parties (State party represented by each, e.g., for plaintiff Jones, for defendant Smith, etc.):

Note—Effect of Continuance: If any of the above mentioned cases is scheduled and thereafter continued, a new scheduling praecipe will be required in order to schedule the case again, unless the continuance order fixes a date certain or otherwise provides.]

6. Form of Scheduling Praecipies

ARGUMENT/HEARING SCHEDULING PRAECIPE AND ORDER

_____)	Place this case on an Argument
Plaintiff)	schedule for <input type="checkbox"/> Hearing <input type="checkbox"/>
v.)	Argument on _____
_____)	(Nature of Proceeding or
Defendant)	Pleading)
	No. ____ CIVIL 20 ____

Type of scheduling requested:

☐ Sec. Reg. (On the next available Argument Schedule).

☐ Prompt (At a presently fixed date and time on an Argument Schedule already issued).

State reason for Prompt scheduling (Granted only for cause)

Estimated hearing time for all parties: _____

Judge _____ has previously heard a matter in this case.

☐ I am the moving party and my brief has been filed and served pursuant to SOM.R.C.P. 210.

☐ A copy of this praecipe has been served on opposing counsel and any unrepresented party.

_____ Signature	_____ Type Name and Party Represented
--------------------	--

ORDER

AND NOW, this ____ day of ____ 20__, ☐ Argument ☐ Hearing is scheduled on ____ the ____ day of __, 20__, in Court Room __, at ____ M. before Judge ____.

BY THE COURT

J.

Distribution:

TRIAL SCHEDULING PRAECIPE

_____)	IN THE COURT OF COMMON
Plaintiff)	PLEAS OF SOMERSET COUNTY,
v.)	PENNSYLVANIA
_____)	
Defendant)	NO. ____ CIVIL 20

ARBITRATION/TRIAL SCHEDULING PRAECIPE AND ORDER

CIVIL ARBITRATION CASE

1. Schedule this case for Arbitration Hearing sec. reg.
2. Estimated total time for presentation by all parties:

_____ Minutes/Hours/Days

CIVIL TRIAL CASE

Place this case on the next issued Civil Trial List for:

_____ JURY TRIAL _____ NONJURY TRIAL.

Signature

Type Name and Party Represented

ORDER

AND NOW, this ___ day of ___, 20___, ☐ Arbitration Hearing ☐ Non Jury Trial is scheduled for ___ the day of ___, 20___, at ___ o'clock ___ M. in Courtroom ___ before Judge _____.

☐ This case will be scheduled for trial at the next call of the Civil and Family Trial List to be held on ___ the ___ day of ___, 20___ at ___ o'clock ___ M. in Courtroom No. ___, before Judge _____.

BY THE COURT

J.

II. I CERTIFY that:

1. This case is ready for disposition by the Court.
2. The signed original of this praecipe and one signed copy thereof (for transmission to the administrator) have been or will be promptly filed to the case in the office of the court clerk; and a signed copy has been or will be promptly served upon each other counsel and upon each unrepresented party who has been served with initial process or pleading.
3. All prescheduling and pretrial procedures, including pleading and discovery, have been completed.
4. All parties, witnesses and counsel for the undersigned are expected to be available and present when the case is scheduled, barring unforeseeable events hereafter occurring. If any event hereafter occurs requiring continuance, a motion therefor will be promptly presented to the Court.
5. I have read and am acquainted with the local rules governing scheduling and court procedures.

III. REMARKS:

Signature

Type or print name of signer and party represented:

List of All Counsel and Unrepresented Parties (State party represented by each, e.g., for plaintiff Jones, for defendant Smith, etc.):

Note—Effect of Continuance: If any of the above mentioned cases is scheduled and thereafter continued, a new scheduling praecipe will be required in order to schedule the case again, unless the continuance order fixes a date certain or otherwise provides.

G. Preparation and Form of Orders and Decrees. Copies for Distribution.

1. Unless otherwise directed by the court, decrees and orders requested by a party shall be drafted by the attorney at whose instance they are to be made, and shall be submitted to the court for approval.

2. All proposed orders presented to the court, whether by an attorney, court staff or department, or other person, shall list thereon the names of all counsel in the case (of record and known, including counsel for applicant), and shall indicate the party represented by each (e.g., for plaintiff, for defendant, for petitioner, for respondent, etc.).

Note: Nothing herein is intended to alter the present practice of the court reporters in preparing court orders.

3. Counsel preparing the order shall be responsible for copying, and shall provide sufficient copies to the Prothonotary for distribution to all other counsel and parties. If the order continues a case or fixes a date for hearing or argument, counsel shall ensure that the order and its accompanying documents are transmitted to the Court Administrator for notation of the matter for scheduling purposes. The order and documents shall then be filed in the proper office.

4. All documents prepared in and issued from chambers shall be transmitted to the Court Administrator for copying and distribution sec reg, and for scheduling if necessary, then filed in the proper office.

Adopted May 12, 2004, effective July 26, 2004; Amended October 31, 2006.

[Pa.B. Doc. No. 06-2308. Filed for public inspection November 22, 2006, 9:00 a.m.]

WESTMORELAND COUNTY

Rules W212.1, W1301, W1301.1, W1308; No. 3 of 2006

And Now this 2nd day of November 2006, it is *Hereby Ordered* that Westmoreland County Rules of Civil Procedure W212.1, W1301, and W1308 are rescinded. New Rules W212.1, W1301, and W1301.1 are adopted. The effective date of these changes is January 1, 2007.

DANIEL J. ACKERMAN,
President Judge

RULE W212.1 CERTIFICATION OF READINESS FOR TRIAL. TIME FOR COMPLETING DISCOVERY AND FILING PRE-TRIAL STATEMENT

(a) Any party may file a certification with the prothonotary that the case is ready for trial. A copy of the certification found in the Forms section of these rules shall be served on the judge assigned to the case, on the Court Administrator and on all other parties or their counsel.

(b) The term "ready for trial" means that:

- (1) the pleadings are closed;

(2) witnesses are presently available to appear at trial; and

(3) discovery is complete, except for those depositions to be taken solely for the purpose of being presented at trial, such as the depositions of expert witnesses.

(c) Upon receipt of the certification of readiness, the judge assigned to the case shall issue an Order addressing the following matters:

(1) When Pre-Trial Statements shall be due pursuant to Pa.R.C.P. 212.I(c) (2), which dates shall be set prior to the Pre-Trial Conference.

(2) The date of the Pre-Trial Conference pursuant to Pa.R.C.P. 212.3.

(3) Such other matters that may aid in the disposition of the case.

RULE W1301 CASES FOR SUBMISSION TO ARBITRATION

(a) All civil cases, except those involving title to real estate or actions in equity, wherein the amount in controversy (exclusive of interest and costs) is \$30,000 or less, shall be heard and decided by a board of arbitration consisting of three members of the bar. The prothonotary shall, at the time the complaint is filed, assign a trial judge.

Cases Submitted By the Parties

(b) Any civil case with an amount in controversy exceeding \$30,000 may be referred to a board of arbitration by agreement signed by all parties or their counsel.

(c) The plaintiff shall, at the time of filing a case subject to arbitration, provide the court administrator a copy of the Complaint. The party who files an appeal of a magisterial district judge's decision shall, at the time of filing the Notice of Appeal, provide the court administrator a copy of the Notice of Appeal. Any party filing a reinstatement of any case subject to arbitration as provided in subsection (a), shall, at the time of filing the Reinstatement, serve a copy of the Reinstatement on the court administrator.

(d) The court administrator shall schedule the case for arbitration on the first available arbitration date but not sooner than 120 days from the date of filing of the Complaint, Notice of Appeal, or the Reinstatement thereof. The court administrator shall, 30 days prior to the arbitration date, provide notice of the date to the parties.

Cases Submitted By the Court

(e) The court, on its own motion or on motion of either party, may by depositions, settlement conference, hearing or otherwise, determine that the amount actually in controversy does not exceed \$30,000 (exclusive of interest and costs) and enter an order referring the case to arbitration.

RULE W1301.1 DISCOVERY IN ARBITRATION PROCEEDINGS

(a) A party to compulsory arbitration proceedings shall be limited, prior to the arbitration hearing, to the discovery hereinafter set forth, unless additional discovery is deemed necessary by counsel and is permitted by the court upon cause shown.

(b) Depositions may be taken only in the following instances:

(1) Where the party or person to be examined is

(i) aged or infirm, or

(ii) about to leave this county for a place outside the Commonwealth or a place more than one hundred miles from the Westmoreland County Courthouse, or

(2) Upon other good cause shown.

(c) Discovery must be completed no later than 10 days prior to the arbitration hearing. Failure to complete discovery within this period shall be deemed a waiver of discovery prior to the hearing. Responses shall be made within the periods prescribed by the Pennsylvania Rules of Civil Procedure.

(d) Discovery to any party shall be limited to the following, applicable fourteen interrogatories and requests for production of documents.

Discovery Directed To Any Party

TO THE [PLAINTIFF (s) _____]
[DEFENDANT(s) _____]
[ADDITIONAL DEFENDANT (s)] _____ :

(1) State your full name and address.

(2) State the full names, present addresses and telephone numbers of witnesses to the incident described in the complaint and the names, present addresses and telephone numbers of witnesses who will be called to testify at the hearing.

(3) It is requested that you produce any written statements, not subject to the attorney-client privilege, signed, adopted or approved by any witness; a written summary of any other statements (including oral statements), and identify any witness who has given a stenographic, mechanical, electrical or other recording that has not yet been transcribed.

(4) It is requested that you produce all photographs, maps, drawings, diagrams, or other demonstrative evidence that may be introduced at the hearing or that may otherwise pertain to the lawsuit.

(5) If this action arises from an accident involving your operation of a motor vehicle, state whether you were in any way impaired in the operation of the vehicle and produce a copy of your driver's license and the police accident report.

Discovery Directed To A Party-Defendant

(6) State whether there is any insurance covering any defendant for the incident or matter described in the complaint. If so, list the name of each company providing coverage, together with the amount of coverage provided, and produce a copy of each declaration page.

Discovery Directed To A Party-Plaintiff Claiming Personal Injuries

(7) Produce all medical documents, including hospital records, treating physician and chiropractic records, or authorizations concerning your injuries.

(8) Disclose the name and address of each physician who treated you during the period from five (5) years prior to the incident to the present date.

(9) Did you sustain injuries that resulted in work loss during the period from five (5) years prior to the incident to the present date? Answer "Yes" or "No."

(10) If the answer to Interrogatory 9 is "Yes," state the date of the injury, the nature of the injury, and the dates of lost work.

(11) If a claim is being made for lost income, state the name and address of your employer at the time of the

incident, the name and address of your immediate supervisor at the time of the incident, your rate of pay, the dates of work loss due to the injuries from this accident, and the total amount of your work loss claim.

Interrogatories That Apply Only To Personal Injury Claims Arising Out Of A Motor Vehicle Accident

(12) If you are making a claim for medical benefits or lost income, have you received or are you eligible to receive benefits from Workers' Compensation or any program, group contract, or other arrangement for payment of benefits as defined by Title 75 P.S. § 1719(b)? Answer "Yes" or "No."

(13) If the answer to Interrogatory 12 is "Yes," set forth the type and amount of these benefits.

(14) Are you subject to the "Limited Tort Option" or the "Full Tort Option" of automobile insurance coverage, as defined in Title 75 P.S. § 1705(a) and (b)?

_____ Limited Tort Option (no claim can be made for non-monetary damages)

_____ Limited Tort Option (claim can be made for non-monetary damages because the injuries fall within the definition of serious injury or because one of the exceptions set forth in 75 P.S. § 1705(d)(1)—(3) applies)

_____ Full Tort Option

Note: This rule does not affect the provisions or requirements of Pa.R.Civ.P. 1305.

Note: This rule does not preclude additional discovery under the Pennsylvania Rules of Civil Procedure in cases appealed pursuant to Pa.R.C.P. § 1308.

[Pa.B. Doc. No. 06-2309. Filed for public inspection November 22, 2006, 9:00 a.m.]

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF OSTEOPATHIC MEDICINE [49 PA. CODE CH. 25] Respiratory Therapists

The State Board of Osteopathic Medicine (Board) amends §§ 25.502 and 25.509 (relating to definitions; and renewal of certification) and adds §§ 25.509a and 25.509b (relating to requirement of continuing education; and approved educational programs) to read as set forth in Annex A.

A. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. *Statutory Authority*

The final-form rulemaking implements the act of July 2, 2004 (No. 56, P. L. 486) (Act 56), which directs the Board to adopt, promulgate and enforce regulations that establish requirements for continuing education to be met by individuals holding certification as respiratory therapists in this Commonwealth.

C. *Background and Purpose*

Act 56, which became effective August 31, 2004, amended the Osteopathic Medical Practice Act (act) (63 P. S. § 271.1—271.18) by adding section 10.2(f) of the act (63 P. S. § 271.10b(f)) to provide for the continuing education of respiratory therapists. The Board is amending its regulations to establish requirements for completion of continuing education for the practice of respiratory therapists.

D. *Summary of Comments and Responses to Proposed Rulemaking*

Proposed rulemaking was published at 35 Pa.B. 5523 (October 8, 2005). The Board received comments from the House Professional Licensure Committee (HPLC), the Independent Regulatory Review Commission (IRRC) and the Pennsylvania Society for Respiratory Care (PSRC).

The HPLC and IRRC requested that the Board clearly state its intention that the continuing education requirements, as set forth in § 25.509a, would be effective starting with the biennial period that begins on November 1, 2006. For ease of administration, however, the Board, in final-form rulemaking, is requiring applicants for biennial renewal to complete 20 hours of continuing education beginning January 1, 2007, through December 31, 2008. Also, the commentators suggested that the Board allow nontraditional continuing education methods for a portion of the 20-hour continuing education requirement. The Board agreed with this suggestion and has amended the language to permit up to 10 of the 20 credits to be completed through nontraditional means such as pre-recorded presentations and Internet-based presentations.

The HPLC recommended that the Board substitute the language in section 10.2(f)(3) of the act for the language in proposed § 25.509a(b). The Board agreed and made

this change. The HPLC and IRRC suggested adding the words “all or a portion” after the word “waive” in § 25.509a(c) so that the language accurately tracks section 10.2(f)(4) of the act. The Board agreed with this suggestion and amended the language accordingly. Also, the HPLC and IRRC suggested that the Board include in § 25.509a(c) specific language from section 10.2(f)(4) of the act pertaining to waiver of continuing education. The Board agreed with this suggestion and added language accordingly.

The HPLC asked the Board to consider clarifying the meaning of “advanced course work in respiratory care” in § 25.509b(b). The Board agreed and added language clarifying that advanced course work is course work beyond the academic requirements necessary for certification as a respiratory care practitioner.

The PSRC asked that the Board consider requiring at least 1 continuing education credit hour be completed in the category of ethics and 1 credit hour be completed in the category of patient safety. The Board agreed and added this requirement in § 25.509a(a).

E. *Fiscal Impact and Paperwork Requirements*

The final-form rulemaking will have a fiscal and paperwork impact on the Commonwealth in that the Board will incur costs related to reviewing and approving continuing education courses for respiratory care practitioners.

F. *Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 26, 2005, the Board submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 5523, to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 3, 2006, the final-form rulemaking was approved by the HPLC. On October 18, 2006, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 19, 2006, and approved the final-form rulemaking.

H. *Contact Person*

Interested persons may obtain information regarding the final-form rulemaking by writing to Beth Sender Michlovitz, Board Counsel, State Board of Osteopathic Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, bmichlovitz@state.pa.us.

I. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968

(P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing act identified in Part B of this preamble.

(4) The amendments to the final-form rulemaking are necessary and appropriate for administration and enforcement of the authorizing act and do not enlarge the purpose of the proposed rulemaking published at 35 Pa.B. 5523.

J. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 25, are amended by amending §§ 25.502 and 25.509 and adding §§ 25.509a and 25.509b to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

OLIVER C. BULLOCK, D. O.,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 6742 (November 4, 2006).)

Fiscal Note: Fiscal Note 16A-5317 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 25. STATE BOARD OF OSTEOPATHIC MEDICINE

Subchapter K. RESPIRATORY CARE PRACTITIONERS

§ 25.502. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

AARC—American Association for Respiratory Care, an organization which provides continuing professional development programs.

AMA—American Medical Association, an organization which provides continuing professional development programs.

AOA—American Osteopathic Association, an organization which provides continuing professional development programs.

Act—The Osteopathic Medical Practice Act (63 P. S. §§ 271.1—271.18).

CRTT—The Certification Examination For Entry Level Respiratory Therapy Practitioners, a National uniform examination developed and administered by the NBRC for certified respiratory care therapy practitioners.

CSRT—Canadian Society of Respiratory Therapists, an organization which provides continuing professional development programs.

JRCRTE—The Joint Review Committee on Respiratory Therapy Education, which accredits respiratory care programs.

NBRC—The National Board for Respiratory Care, the agency recognized by the Board to certify respiratory care practitioners.

Respiratory care practitioner—A person who has been certified in accordance with the act and this subchapter.

§ 25.509. Renewal of certification.

(a) A certification issued under this subchapter expires on December 31 of every even-numbered year unless renewed for the next biennium.

(b) Biennial renewal forms and other forms and literature to be distributed by the Board will be forwarded to the last mailing address given to the Board.

(c) To retain the right to engage in practice, the certificateholder shall renew certification in the manner prescribed by the Board, pay the required fee and comply with the continuing education requirement of § 25.509a (relating to requirement of continuing education), prior to the expiration of the current biennium.

(d) When a certification is renewed after December 31 of an even-numbered year, a penalty fee of \$5 for each month or part of a month of practice beyond the renewal date will be charged in addition to the renewal fee.

§ 25.509a. Requirement of continuing education.

(a) Commencing with the biennial period January 1, 2007, through December 31, 2008, and each subsequent biennial period, an applicant for biennial renewal or reactivation of certification is required to complete a minimum of 20 hours of continuing education as set forth in section 10.2(f)(2) of the act (63 P. S. § 271.10b(f)(2)) subject to the following:

(1) No more than 10 credit hours may be completed in nontraditional continuing education such as prerecorded presentations, Internet-based presentations and journal review programs. To qualify, the provider shall make available documented verification of completion of the course or program.

(2) One hour each must be completed in medical ethics and in patient safety.

(b) An individual applying for the first time for certification in this Commonwealth is exempt from the continuing education requirement for the biennial renewal period following initial certification.

(c) The Board may waive all or a portion of the requirements of continuing education in cases of serious illness, undue hardship or military service. It shall be the duty of each certificateholder who seeks a waiver to notify the Board in writing and request the waiver prior to the end of the renewal period. The request must be made in writing, with appropriate documentation, and include a description of circumstances sufficient to show why the certificateholder is unable to comply with the continuing education requirement. The Board will grant, deny or grant in part the request for waiver and will send the certificateholder written notification of its approval or

denial of the waiver request. A certificateholder who requests a waiver may not practice as a respiratory care practitioner after the expiration of the certificateholder's current certificate until the Board grants the waiver request.

(d) A certificateholder shall maintain the information and documentation concerning compliance with the continuing education requirement or the waiver granted for a period of at least 2 years.

§ 25.509b. Approved educational programs.

(a) The Board approves respiratory care continuing education programs designated for professional development credits by the AARC, the AMA, the AOA and the CSRT.

(1) Qualifying AMA continuing education programs must be in AMA PRA Category I credits, as defined in § 25.1 (relating to definitions).

(2) Qualifying AOA continuing education programs must be in Category I-A or I-B credits, as defined in § 25.1.

(b) Advanced course work in respiratory care successfully completed at a degree-granting institution of higher education approved by the United States Department of Education which offers academic credits are also approved for continuing education credit by the Board. Advanced course work is course work beyond the academic requirements necessary for certification as a respiratory care practitioner.

(c) The Board will not accept courses of study which do not relate to the actual provision of respiratory care. Examples of unacceptable courses are those in office management and financial procedures.

[Pa.B. Doc. No. 06-2310. Filed for public inspection November 22, 2006, 9:00 a.m.]

PROPOSED RULEMAKING

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 443]

Roadside Rest Areas

The Department of Transportation (Department), under section 8 of the act of June 7, 1961 (P.L. 257, No. 151) (36 P.S. § 478.18), proposes to amend Chapter 443 (relating to roadside rest areas) to read as set forth in Annex A.

Purpose of this Chapter

The purpose of this chapter is to set forth regulations to ensure the comfort, convenience, cleanliness, health and safety of members of the traveling public who utilize roadside rest areas and facilities.

Purpose of the Proposed Rulemaking

The purpose of this proposed rulemaking is to provide greater detail in the description of conditions and activities not permitted at roadside rest areas and facilities.

Summary of Significant Amendments

Sections 443.1 and 443.2 (relating to purpose and policy; and prohibited activities or actions) are amended to include more specific definitions of activities or actions that are prohibited at roadside rest areas and Welcome Centers.

Persons and Entities Affected

This proposed rulemaking affects members of the general motoring public who stop at roadside rest areas and Welcome Centers.

Fiscal Impact

Implementation of this proposed rulemaking will not require the expenditure of additional funds by the Commonwealth or local municipalities.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on November 13, 2006, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Sunset Provisions

The Department will make this proposed rulemaking effective upon final-form publication following appropriate evaluation of comments, suggestions or objections received during the period allowed for public comment. The Department is not establishing a sunset date for these

regulations. The regulations are needed to administer provisions required under 75 Pa.C.S. (relating to the Vehicle Code). The Department, however, will continue to closely monitor the regulations for their effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Jack Christensen, Chief, Facilities Management Division, Bureau of Office Services, 400 North Street, 5th Floor, Harrisburg, PA 17120 within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Contact Person

The contact person for technical questions about the proposed rulemaking is Robert Kleimenhagen, Jr., Central Region Facilities Administrator, Facilities Management Division, Bureau of Office Services, 400 North Street, 5th Floor, Harrisburg, PA 17120, (717) 787-7002.

ALLEN D. BIEHLER, P. E.,

Secretary

Fiscal Note: 18-408. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart B. NONVEHICLE CODE PROVISIONS

ARTICLE III. HIGHWAYS

CHAPTER 443. ROADSIDE REST AREAS

§ 443.1. Purpose and policy.

(a) This chapter is promulgated for the purpose of providing comfortable, [**convenience**] **convenient**, clean, attractive and safe places for the general motoring public and to set forth rules to insure the maximum comfort, convenience, cleanliness, health and safety of those members of the general public using the facilities.

(b) **This chapter applies to all rest areas administered by the Department, including those containing information centers for the traveling public, that is Welcome Centers.**

(c) **This chapter is intended to limit activities and actions in roadside rest areas to those that are consistent with the purpose of the facilities.**

§ 443.2. Prohibited activities or actions.

The following specified activities or actions [**shall be**] are prohibited in roadside rest areas:

(1) Driving or parking of a vehicle in areas other than those provided. **Drivers shall obey all posted traffic signs and markings.**

(2) Parking or standing of a vehicle for more than 2 hours in a single 24-hour period or in excess of the posted time limit. **Vehicles unattended for more than 24 hours will be considered abandoned and subject to removal and storage at the sole cost and expense of the owner.**

(3) Defacing or damaging buildings or other facilities [.], **skateboarding, rollerblading, skating, biking or sledding, riding of all-terrain vehicles or smoking in areas designated as "No Smoking."**

(4) Igniting or maintaining fires for heating or cooking equipment, except in areas or facilities designed for the purpose, **camping overnight or setting up a tent, sleeping anywhere but in a legally parked vehicle, or remaining anywhere but in a legally parked vehicle for more than 2 hours.**

(5) Depositing or disposing of refuse or waste, except picnic waste and contents of vehicle litter bags, which shall be deposited only in areas or containers provided **[therefore] for that purpose.** Disposing of camping, **sewage** or household refuse in **[this area] these areas** is prohibited.

(6) Consumption of alcoholic beverages, **or the use, possession or delivery of controlled substances.**

(7) Discharging or shooting of firearms or bows and arrows, **[and]** hunting or fishing, **or parking of vehicles for the purpose of hunting or fishing outside of the rest area.**

(8) Maintenance or repairing of vehicles **or attachments to vehicles**—oil changes, filter replacements, draining of coolants, washing vehicles[,] **or attachments to vehicles**, motor disassembly or assembly and the like—except in emergencies.

(9) Release of pets **or unloading of livestock.** Animals on leashes shall be permitted only in areas designated as pet area, **except for Seeing-Eye or Service Dogs which are permitted anywhere.**

* * * * *

(12) Sale of a product or conduct of other commercial activity, except **[in emergencies] when the Department authorizes, by written agreement, vending and communication facilities in areas within limited access right of way, or vending, communication facilities, and other commercial activities serving the needs of the traveling public in areas outside limited access right of way.**

* * * * *

(14) Use of the area or facilities when closed for the season **or for any other reason.**

* * * * *

(16) Use of the area or facilities for special events, except for free “Coffee Break” events and similar nonprofit activities for the traveling public when approved by the Department and on the terms and conditions the Department deems appropriate.

(17) Other activities that interfere with the proper functioning of the rest area for the purposes set forth in § 443.1 (relating to purpose and policy), including:

(i) Soliciting, harassing, intimidating or coercing travelers.

(ii) Impeding the movement of persons or interrupting traffic flow.

(iii) Picketing, demonstrating or performing oration or similar expressive activities.

(iv) Distributing written materials without the written agreement of the Department.

§ 443.3. Additional prohibited activities or actions on noninterstate highways.

In addition to the activities prohibited in § 443.2 (relating to prohibited activities or actions), parking of

commercial vehicles or the parking of a vehicle between dusk and dawn is prohibited in roadside rest areas along noninterstate highways, **unless otherwise posted by the Department.**

[Pa.B. Doc. No. 06-2311. Filed for public inspection November 22, 2006, 9:00 a.m.]

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 49]

Certification of Professional Personnel

The State Board of Education (Board) proposes to amend Chapter 49 (relating to certification of professional personnel) to read as set forth in Annex A. The Board is acting under the authority of Article XII and section 2603-B of the Public School Code of 1949 (code) (24 P. S. §§ 12-1201—12-1215 and 26-2603-B) and the act of May 29, 1931 (P. L. 210, No. 126) (24 P. S. §§ 1224—1231).

Purpose

Chapter 49 sets forth requirements for certification of professional personnel in public schools. The proposed rulemaking changes the scope of grade level certification requirements for new teachers of prekindergarten through grade three; grades four through eight; and for all grade levels for special education teachers to ensure that preparation is aligned with the academic content and developmental needs of students they will be teaching. The proposed rulemaking also focuses existing requirements for induction programs and continuing professional education to provide both new and current teachers with the knowledge and skills necessary to effectively provide instruction to diverse learners in inclusive classroom settings.

Background

At the September 21 and 22, 2005, meetings of the Board and its councils and committees, the Department of Education (Department), after considerable research and consultation with over 600 stakeholders, presented its recommendations to restructure teacher preparation and certification requirements. Most significant of these recommendations was a requirement that all new teachers hold dual certification in both their academic area and in special education. The Department also called for splitting the current elementary certificate into an early childhood certificate that would cover prekindergarten through grade three and an elementary certificate that would cover grades four through six.

Using the Department's proposal as a starting point, the Board's Chapter 49 Committee conducted three regional public roundtable meetings in Pittsburgh, Harrisburg and Allentown to provide interested individuals and organizations an opportunity to discuss the proposal with members of the Board. Interested individuals and organizations were also encouraged to provide written comments to the Board.

Based on discussions at the roundtables, written comments received and individual discussions among members of the Board and interested individuals, the Board developed its own new proposal. An invitational roundtable meeting was held in Harrisburg where individuals who attended one of the previous roundtable

meetings were invited to discuss the new proposal. Based on these discussions, additional revisions were made to the Board's draft proposal. These were discussed at the November 2005 and January 2006 Board meetings. In March 2006, the chairperson of the Chapter 49 Committee and staff met with representatives of teacher education programs from about 20 independent colleges and universities to discuss the latest proposal.

Throughout this period, the chairperson of the Chapter 49 Committee and other members of the Board engaged in numerous discussions with individuals and organizational representatives. Additional refinements to the proposal were made and shared at the March 2006 Board meeting. Interested individuals and representatives of numerous organizations presented formal testimony at the hearings held in Downingtown, Harrisburg and Monroeville. Based on this testimony, additional refinements were made to the proposal. The Board announced its intention to adopt the regulations at its June 28-29, 2006 meetings.

Requirements of the Proposed Rulemaking

The proposed rulemaking amends the following sections.

Section 49.1 (relating to definitions) is amended by adding definitions for "community provider," "core academic subject" and "inclusive setting." The definitions of "diverse learner," "educational specialist" and "prekindergarten" are amended.

Section 49.13(b) (relating to policies) is amended to require that on or before January 1, 2010, teacher education programs include at least 9 credits or 270 hours of instruction on accommodations and adaptations for students with disabilities in an inclusive setting and at least 3 credits or 90 hours of instruction to address the instructional needs of English language learners. The content of the 9 credits or 270 hours of instruction would have to include instruction in literacy skills development and cognitive skill development for students with disabilities.

Section 49.14 (relating to approval of institutions) is amended to add language requiring institutions to demonstrate how instructional and clinical activities prepare candidates for teaching certificates to enable the achievement of all students, including diverse learners in an inclusive setting.

Section 49.16 (relating to approval of induction plans) is amended to add a requirement that induction programs include teachers in prekindergarten programs. The proposed rulemaking also directs the Department to establish guidelines for induction plans. This language puts long-standing practice into regulation. In addition, the Board proposes to add language that requires induction activities to address teaching diverse learners in inclusive settings.

Section 49.17 (relating to continuing professional development) is amended to add language directing the Secretary to establish guidelines for submission of the professional education plan. This proposed language puts long-standing practice into regulation. Proposed language also requires the plan to describe how all professional employees will participate in continuing education focused on teaching diverse learners in inclusive settings. In addition, proposed language directs school districts that operate prekindergarten programs through community providers to offer professional education opportunities to teachers in the prekindergarten program.

Section 49.18 (relating to assessment) is amended to add a requirement that candidates for a certificate in special education be assessed in the area of general knowledge.

Section 49.62b (relating to Program Endorsement Certificate) is amended to amend, for purposes of clarity and illustration, language regarding the Program Endorsement Certificate.

Section 49.83 (relating to Instructional II) is amended to use the term "credits." Also, language is added directing the Department to issue a Certification and Staffing Policy Guideline that establishes up to 6 credit requirements of the 24 required for each certificate.

Section 49.85(a) (relating to limitations) is amended to require that instructional certificates issued before January 1, 2012, adhere to the certificate structure outlined in paragraphs (1)–(6).

Section 49.85(b) is amended to require that instructional certificates issued on or after January 1, 2012, follow the new grade level limitations outlined as follows: Early Childhood—prekindergarten through grade three; Elementary/Middle—grades 4 through 8; Secondary—grades 7 through 12; Specialized Areas—prekindergarten through 12; Special Education/Primary—prekindergarten through 3; Special Education/Elementary/Middle—grades 4 through eight; Special Education Secondary—grades 7 through 12; and Special Education—hearing impaired, visually impaired and speech/language impaired—grades prekindergarten through 12.

Section 49.85(d) is added to grant the Secretary authority to grant exceptions between the Early Childhood and Early Childhood/Special Education and Elementary/Middle and Elementary/Middle/Special Education certificates for individual teachers on a case-by-case basis when requested by a school entity, based on guidelines established by the Secretary.

Section 49.85(e) is added to require that community provided prekindergarten services be provided by teachers certified in early childhood within 5 years for programs in place prior to the effective of adoption of this proposed rulemaking and 5 years from the start of services for newly contracted prekindergarten programs.

Section 49.85(f) is added to authorize the Secretary to grant Statewide exceptions to specific provisions in this section that address Statewide shortages of certified personnel when necessary to facilitate the transition to the revised provisions scheduled to be effective on January 1, 2012.

Section 49.86 (relating to accelerated program for Early Childhood and Elementary/Middle level certificateholders) would be added to direct the Department to establish standards for the establishment of accelerated programs of study to permit an Early Childhood certificateholder to earn an Elementary/Middle certificate and an Elementary/Middle certificateholder to earn a Early Childhood certificate through an approved Commonwealth institution.

Section 49.131 (relating to basic requirements for baccalaureate and nonbaccalaureate programs) is amended to add special education to content that must be included in teacher preparation programs for candidates for Vocational Education certificates.

Section 49.142 (relating to Vocational Instructional I) is amended to require, for Vocational I certificates issued on or after January 1, 2012, that at least 3 credits or 90

hours of the required 18 credits address accommodations and adaptations for diverse learners in an inclusive setting.

Section 49.143 (relating to Vocational Instructional II) is amended to add requirements that, of the 60 credits required for a holder of an Vocational I certificate to obtain the Vocational II certificate, at least 6 credits or 180 hours must address accommodations and adaptations for students with disabilities in an inclusive setting and at least 3 credits or 90 hours in teaching English language learners must be completed.

Miscellaneous

For purposes of teacher education programs and related requirements in §§ 49.13(b)(4)(i), 49.142(a)(3) and 49.143(2), 1 credit equals 30 hours of coursework. Applicable hours are limited to a combination of seat hours of classroom instruction, field observation experiences, major research assignments, and development and implementation of lesson plans with accommodations and adaptations for diverse learners in an inclusive setting.

Affected Parties

The proposed rulemaking will affect professional educators, public schools, teacher education programs and professional employees of the public schools of this Commonwealth (including intermediate units, area vocational-technical schools, public charter and alternative schools).

Cost and Paperwork Estimates

It is estimated that costs for implementation and compliance with the proposed rulemaking would total \$3.23 million. These costs would be incurred by the 95 colleges and universities that offer Department-approved teacher education programs. The bulk of these costs represent staffing costs to programs currently without instructional resources with content expertise in providing instruction to diverse learners. The remaining costs would be for review and revision of degree course requirements and for the rewriting of certain course curricula.

Effective Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

In accordance with its policy and practice respecting all regulations that it promulgates, the Board plans to review the effectiveness of Chapter 49 after 4 years. Therefore, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 8, 2006, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, jrbuckheit@state.pa.us within 30 days following publication in the *Pennsylvania Bulletin*. Persons with disabilities who need an alternative means of providing public comment may make arrangements by calling Jim Buckheit, (717) 787-3787 or TDD (717) 787-7367.

JIM BUCKHEIT,
Executive Director

Fiscal Note: 6-303. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart C. HIGHER EDUCATION

CHAPTER 49. CERTIFICATION OF PROFESSIONAL PERSONNEL

Subchapter A. GENERAL PROVISIONS

THE PROGRAM

§ 49.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Community provider—A not-for-profit or for-profit organization that operates prekindergarten programs.

* * * * *

Core academic subject—Includes reading, language arts, mathematics, science, foreign languages, social studies and the arts.

* * * * *

Diverse [learners] learner—[Those students] A student who because of limited English language proficiency or disabilities may have academic needs that require varied instructional strategies to help [them] the student learn.

Educational specialist—Professional certified personnel whose primary responsibility is to render professional service other than classroom teaching, such as dental hygienist, home and school visitor, instructional technology specialist, social restoration specialist, nutrition service specialist, elementary counselor, secondary counselor, school nurse and school psychologist.

* * * * *

Inclusive setting—The placement of a diverse learner in a regular classroom setting.

* * * * *

Prekindergarten—A program operated by a school district or under contract from a school district that is open to children who are 3 [or 4] years of age and who have completed the program prior to the school district's entry age for kindergarten. [A school district may make individual exceptions based upon local policy that would permit enrollment of children under 3 years of age or over 5 years of age.]

* * * * *

§ 49.13. Policies.

* * * * *

(b) The Department will have the following responsibilities with respect to certification and permitting of professional personnel in the schools of this Commonwealth:

* * * * *

(4) Evaluation and approval of teacher education programs leading to the certification and permitting of professional personnel. **[Program approval reviews shall be conducted by professional educators from basic and higher education.]**

(i) The evaluation by the Department will provide assurance that, on or before January 1, 2010, teacher education programs will require at least 9 credits or 270 hours, or an equivalent combination thereof, regarding accommodations and adaptations for students with disabilities in an inclusive setting. Within the content of these 9 credits or 270 hours, instruction in literacy skills development and cognitive skill development for students with disabilities must be included, as determined by the institution. At least 3 credits or 90 additional hours, or an equivalent combination thereof, must address the instructional needs of English language learners. For purposes of this requirement, 1 credit equals 30 hours of coursework. Applicable hours are limited to a combination of seat hours of classroom instruction, field observation experiences, major research assignments, and development and implementation of lesson plans with accommodations and adaptations for diverse learners in an inclusive setting.

(ii) Program approval reviews shall be conducted by professional educators from basic and higher education.

* * * * *

§ 49.14. Approval of institutions.

To be authorized to conduct programs that lead to certificates for professional positions, institutions and any of their off-campus centers engaged in the preparation of teachers shall meet the following requirements:

* * * * *

(4) Follow Department prescribed standards developed from the following principles:

* * * * *

(ii) Institutions are able to demonstrate how instructional and clinical activities provide educator candidates with the capacity to enable the achievement of all students, **including diverse learners in an inclusive setting.**

* * * * *

§ 49.16. Approval of induction plans.

(a) Each school entity shall submit to the Department for approval a plan for the induction experience for first-year teachers **(including teachers in prekindergarten programs, when offered)**, long-term substitutes who are hired for a position for 45 days or more, and educational specialists. The induction plan shall be submitted as part of the school entity's strategic plan every 6 years as required by Chapter 4 (relating to academic

standards and assessments). The induction plan shall be prepared by teacher or educational specialist representatives, or both, chosen by teachers and educational specialists and administrative representatives chosen by the administrative personnel of the school entity. Newly employed professional personnel with prior school teaching experience may be required by the school entity to participate in an induction program.

(b) The Department **will establish guidelines and** will review for approval induction plans submitted by school entities.

* * * * *

(d) Criteria for approval of the induction plans will be established by the Secretary in consultation with the Board and must include **[an element of accommodations and adaptations for]** induction activities that **focus on teaching diverse learners in inclusive settings.**

§ 49.17. Continuing professional education.

(a) A school entity shall submit to the Secretary for approval a 3-year professional education plan as part of its strategic plan in accordance with **the professional education guidelines established by the Secretary and section 1205.1 of the act (24 P. S. § 12-1205.1).**

* * * * *

(7) The continuing professional education plan must include a description of how the school entity will ensure that all professional employees participate in continuing education focused on teaching diverse learners in inclusive settings.

(8) A school district that contracts with a community provider to operate a prekindergarten program shall address in the school district's professional education plan how the school district will offer professional education opportunities to teachers in the community provider's prekindergarten program.

* * * * *

§ 49.18. Assessment.

(a) The Secretary will institute an assessment program for candidates for certification designed to assess their basic skills; professional knowledge and practice; and subject matter knowledge. Candidates for elementary, K-12 instructional, **special education** and early childhood certificates shall also be assessed in the area of general knowledge. The following principles will guide the Secretary in the development of an assessment program:

* * * * *

MISCELLANEOUS PROVISIONS

§ 49.62b. Program Endorsement Certificate.

Following approval by the Department, baccalaureate or graduate degree granting institutions, alone or in cooperation with other institutions, community colleges or school entities, may offer short programs (12 credits maximum) that lead to the Program Endorsement Certificate. **The Program Endorsement Certificate documents knowledge in new and emerging areas where formal certification does not exist [but would]. The Program Endorsement Certificate is intended to improve [the] a teacher's skills in dealing with complex classroom settings[. Areas include, but are not limited to], including teaching gifted students or di-**

verse learners in areas such as assistive technology curriculum modification, autism spectrum disorders, assessment, gifted education, classroom management, classroom technology and disruptive youth. These endorsements would be added to existing Level I or Level II Certificates but are not required to perform service in these areas.

**Subchapter B. CERTIFICATION OF GRADUATES
FROM COMMONWEALTH INSTITUTIONS
INSTRUCTIONAL CERTIFICATES**

§ 49.83. Instructional II.

The Instructional II Certificate will be issued to an applicant who has completed:

* * * * *

(3) Twenty-four credit hours of collegiate study or its equivalent in credits from the Department, a Pennsylvania intermediate unit or any combination thereof. **The Department will publish a Certification and Staffing Policy Guideline that establishes up to the equivalent of six specific course credit requirements for each certificate.**

* * * * *

§ 49.85. Limitations.

(a) [The] For instructional certificates issued before January 1, 2012, the grade level limitations [of instructional certificates] shall be the following:

(1) Early childhood (prekindergarten, kindergarten, grades one through three or ages 3 [to] through 8).

* * * * *

(b) [The decision about staffing based on age or grade level rests with the school entity.] For instructional certificates issued on or after January 1, 2012, the grade level limitations shall be the following:

(1) Early Childhood (prekindergarten, kindergarten, grades one through three or ages 3 through 8).

(2) Elementary/Middle (grades four through eight or ages 9 through 14). Elementary/Middle certificates permit instruction in any subject in grades four, five and six and in a core academic subject or subjects in grades seven and eight.

(3) Secondary (grades seven through twelve or ages 11 through 21).

(4) Specialized Areas (prekindergarten through grade twelve or up through age 21).

(5) Special Education/Primary (prekindergarten, kindergarten, grades one through eight or ages 3 through 14) with early childhood (prekindergarten, kindergarten, grades one through three or ages 3 through 8), as specified in paragraph (1).

(6) Special Education/Middle (prekindergarten, kindergarten, grades one through eight or ages 3 through 14) with Elementary/Middle (grades four through eight or ages 9 through 14), as specified in paragraph (2).

(7) Special Education/Secondary in a core academic subject (grades seven through twelve or ages 11 through 21).

(8) Special Education Hearing Impaired, Visually Impaired and Speech/Language Impaired Certifi-

cates (prekindergarten, kindergarten, grades one through twelve or ages 3 through 21).

(c) The decision about staffing based on age or grade level rests with the school entity.

(d) The Secretary may grant exceptions to the grade and age level limitations between Early Childhood (subsection (b)(1)), Elementary/Middle (subsection (b)(2)), Special Education/Primary (subsection (b)(5)) and Special Education/Middle (subsection (b)(5)) for individual teachers on a case-by-case basis. The school entity shall submit a written request to the Secretary that provides justification for the exception. The Secretary will set a time limit for each individual exception granted. The Secretary will issue guidelines that outline the circumstances under which exceptions will be granted.

(e) When a school district contracts with a community provider for the provision of prekindergarten services, prekindergarten teachers providing the services shall possess a certificate in early childhood as provided in subsection (a)(1) or subsection (b)(1) within the following time frame:

(i) For contracts in place prior to _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*), _____ (*Editor's Note: The blank refers to a date 5 years after the effective date of adoption of this proposed rulemaking.*).

(ii) For new contracts, 5 years from the start of services.

(f) The Secretary may grant exceptions in response to shortages of certified personnel that apply Statewide to specific provisions of this section when it is necessary to facilitate transition to the revised provisions scheduled to become effective on January 1, 2012. Exceptions may be granted under the following conditions:

(1) The Secretary will provide written notification to the Board that includes relevant information and justification of the need for the exception.

(2) The exception will be valid for a limited term not to exceed 3 years.

(3) The Secretary will report annually to the Board on the nature and status of exceptions made under this section.

§ 49.86. Accelerated program for Early Childhood and Elementary/Middle level certificateholders.

(a) The Department will establish standards for an accelerated program for Early Childhood and Elementary/Middle level certificateholders to be effective January 1, 2012.

(b) Early Childhood Instructional I or Instructional II certificateholders may add the Elementary/Middle Level I Certificate through the successful completion of a Department approved accelerated program of study offered by an approved Commonwealth institution.

(c) Elementary/Middle Level Instructional I or Instructional II certificateholders may add the Early Childhood Instructional I Certificate through the successful completion of a Department approved accelerated program of study offered by an approved Commonwealth institution.

(d) Accelerated programs must include appropriate level academic content aligned with State academic standards, child development and instructional practice appropriate for the developmental level covered by the certificate. Applicants shall demonstrate subject matter knowledge by passing the appropriate assessment under § 49.18 (relating to assessment).

Subchapter C. VOCATIONAL EDUCATION CERTIFICATION

GENERAL PROVISIONS

§ 49.131. Basic requirements for baccalaureate and nonbaccalaureate programs.

* * * * *

(b) Preparation in general education, **special education**, professional education and specialized studies shall be in accordance with standards established by the Department.

* * * * *

VOCATIONAL INSTRUCTIONAL CERTIFICATES

§ 49.142. Vocational Instructional I.

(a) A single certificate will be issued and titled, "Vocational Instructional Certificate." Individuals qualifying for this certificate shall be authorized to teach in the areas for which they also hold an occupational competency credential. The occupational competency credential will be issued by the Department or an institution of higher education approved by the Secretary. The applicant shall have:

* * * * *

(3) Completed 18 credit hours in an approved program of vocational teacher education. **For Vocational I certificates issued on or after January 1, 2012, the 18 credit hours must include at least 3 credits or 90**

hours, or equivalent combination thereof, regarding accommodations and adaptations for diverse learners in an inclusive setting. For purposes of this requirement, 1 credit equals 30 hours of coursework. Applicable hours are limited to a combination of seat hours of classroom instruction, field observation experiences, major research assignments, and development and implementation of lesson plans with accommodations and adaptations for diverse learners in an inclusive setting.

* * * * *

§ 49.143. Vocational Instructional II.

The Vocational Instructional II Certificate shall be a permanent certificate issued to an applicant who has:

* * * * *

(2) Completed 60 credit hours, **including at least 6 credits or 180 hours, or an equivalent combination thereof, regarding accommodations and adaptations for students with disabilities in an inclusive setting and at least 3 credits or 90 hours, or an equivalent combination thereof, in teaching English language learners**, in an approved program in the appropriate field of vocational education. **For purposes of this requirement, 1 credit equals 30 hours of coursework. Applicable hours are limited to a combination of seat hours of classroom instruction, field observation experiences, major research assignments, and development and implementation of lesson plans with accommodations and adaptations for diverse learners in an inclusive setting.**

* * * * *

[Pa.B. Doc. No. 06-2312. Filed for public inspection November 22, 2006, 9:00 a.m.]

NOTICES

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a general permit. The applications concern, but are not limited to, discharges related to industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities or concentrated animal feeding operations (CAFOs). This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal waste; discharge into groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

For NPDES renewal applications in Section I, the Department of Environmental Protection (Department) has made a tentative determination to reissue these permits for 5 years subject to effluent limitations and monitoring and reporting requirements in their current permits, with appropriate and necessary updated requirements to reflect new and changed regulations and other requirements.

For applications for new NPDES permits and renewal applications with major changes in Section II, as well as applications for MS4 individual permits and individual stormwater construction permits in Sections IV and VI, the Department, based upon preliminary reviews, has made a tentative determination of proposed effluent limitations and other terms and conditions for the permit applications. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise, the EPA Region III Administrator has waived the right to review or object to proposed NPDES permit actions under the waiver provision in 40 CFR 123.24(d).

Persons wishing to comment on an NPDES application are invited to submit a statement to the regional office noted before an application within 30 days from the date of this public notice. Persons wishing to comment on a WQM permit application are invited to submit a statement to the regional office noted before the application within 15 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the applications. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests for a public hearing on applications. A public hearing may be held if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. The Department will postpone its final determination until after a public hearing is held.

Persons with a disability who require an auxiliary aid, service, including TDD users, or other accommodations to seek additional information should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

I. NPDES Renewal Applications

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed#)</i>	<i>EPA Waived Y/N ?</i>
PA0229460	Abbott Township 1431 Germania Road Galeton, PA 16922-9445	Abbott Township Potter County	Germania Branch of Kettle Creek 9B	Y

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed#)</i>	<i>EPA Waived Y/N ?</i>
PA0044652 Sewerage	Department of Conservation and Natural Resources Bureau of State Parks Mt. Pisgah State Park R. R. 3 Box 362 Troy, PA 16947-9488	West Burlington Township Bradford County	Mill Creek 4C	Y

II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Applications.

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

PA0054089, Industrial Waste, SIC 4581, **Exelon Generation Company, LLC**, 200 Exelon Way, Kennett Square, PA 19348. This proposed facility is located in Limerick Township, **Montgomery County**.

Description of Proposed Activity: Treated discharge of aircraft wastewater and the stormwater runoff from the fuel transfer area around Limerick airport by means of an oil-water separator.

The receiving stream, UNT Hartenstein Creek, is in the State Water Plan Watershed 3D and is classified for WWF, potable water supply, industrial water supply, livestock water supply, wildlife water supply, irrigation, boating, fishing, water contact sports and esthetics. The nearest downstream public water supply intake for Citizens Utility Home Water Company is located on Schuylkill River and is 7 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on an effluent discharge of average stormwater flow.

Effluent Limitations

<i>Parameters</i>	<i>Daily Maximum</i>
Total Recoverable Petroleum	Monitor and Report
Hydrocarbons	Monitor and Report
Gasoline Range Organics	Monitor and Report
Diesel Range Organics	Monitor and Report
pH	Monitor and Report
CBOD ₅	Monitor and Report
COD	Monitor and Report
Oil and Grease	Monitor and Report
Total Suspended Solids	Monitor and Report
Iron (Dissolved)	Monitor and Report
Ethylene Glycol	Monitor and Report

The proposed effluent limits for stormwater Outfall 003:

Effluent Limitations

<i>Parameters</i>	<i>Daily Maximum</i>
Primary Ingredient in De-icing	Monitor and Report
Material	Monitor and Report
CBOD ₅	Monitor and Report
COD	Monitor and Report
Oil and Grease	Monitor and Report
pH	Monitor and Report
Total Suspended Solids	Monitor and Report
Iron (Dissolved)	Monitor and Report
Ethylene Glycol	Monitor and Report

No monitoring required for stormwater Outfalls 002 and 004—008.

In addition to the effluent limits, the permit contains the following Other Requirements:

1. Public Nuisance.
2. Applicable BAT/BCT.
3. Change in Ownership.
4. Proper Disposal of Sludges.
5. Product Contaminated Stormwater Runoff.
6. PPC Plan Requirements.
7. Requirements Applicable to Stormwater Outfalls.

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

PA No. 0060763, Sewage, **Middle Smithfield Township Municipal Authority**, 25 Municipal Drive, East Stroudsburg, PA 18301. This proposed facility is located in Middle Smithfield Township, **Monroe County**.

The receiving stream, Bushkill Creek, is in the State Water Plan Watershed No. 1E and is classified for HQ-CWF. The nearest downstream public water supply intake for Stroudsburg is located on Delaware River is downstream of the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.050 mgd. Existing conditions.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25		50
Total Suspended Solids	30		60
NH ₃ -N			
(5-1 to 10-31)	3.5		7
(11-1 to 4-30)	10.5		21
Dissolved Oxygen	A minimum of 6.0 mg/l at all times		
Fecal Coliform			
(5-1 to 9-30)	200/100 ml as a geometric mean		
(10-1 to 4-30)	2,000/100 ml as a geometric mean		
pH	6.0 to 9.0 standard units at all times		
Total Residual Chlorine	1.2		2.8
Total Dissolved Solids	1,000		2,000

The proposed effluent limits for Outfall 001 based on a design flow of 0.050 mgd. Reconstructed Treatment Plant.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	8.5		17.0
Total Suspended Solids	10		20
NH ₃ -N			
(5-1 to 10-31)	1.5		3.0
(11-1 to 4-30)	3.5		7.0
Phosphorus as "P"	0.42		0.84
Dissolved Oxygen	a minimum of 6.0 mg/l at all times		
Fecal Coliform	70/100 ml as a geometric mean		
pH	6.0 to 9.0 standard units at all times		
Total Residual Chlorine	1.2		2.8
Total Kjeldahl Nitrogen	5.2		10.4
Nitrogen Nitrate	4.0		8.0
Total Dissolved Solids	1,000		2,000

Southwest Regional Office: Regional Manager, Water Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

PA0003239, Industrial Waste, SIC, 3317, **Penn State Special Metals, LLC**, 7544 Route 18 North, P. O. Box Q, Koppel, PA 16135. This application is for renewal of an NPDES permit to discharge treated process water, cooling water, and untreated stormwater from Koppel Plant in Big Beaver, **Beaver County**.

The following effluent limitations are proposed for discharge to the receiving waters, Beaver River, classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is Beaver Falls Municipal Authority, located at Eastvale, 6.0 miles below the discharge point.

Outfall 113: existing discharge, design flow of 0.0635 mgd.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Flow (mgd)	Monitor and Report				
Total Suspended Solids	34.0	79.4	15	40	
Oil and Grease	0.805	2.42	10	30	
Chromium	0.423	1.056	0.1	0.3	
Nickel	0.316	0.948	0.1	0.3	
Total Residual Chlorine			0.5		1.0
pH	not less than 6.0 nor greater than 9.0				

Outfall 013: existing discharge, design flow of 0.245 mgd.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>

This outfall shall consist solely of sources previously monitored at Internal Monitoring Point 113 and uncontaminated stormwater runoff.

The EPA waiver is not in effect.

PA0217026, Industrial Waste, SIC 3443, **Cemline Corporation**, P. O. Box 55, Cheswick, PA 15024. This application is for renewal of an NPDES permit to discharge untreated cooling water, drinking fountain water, tank test water and stormwater runoff from the Cemline Freeport Road facility in Harmar Township, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, Allegheny River, classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is Oakmont Borough Municipal Authority, located at Oakmont, about 1 mile below the discharge point.

Outfalls 001: existing discharge, average flow of 0.007 mgd.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Flow (mgd)	Monitor and Report				
Total Suspended Solids			30		60
Temperature (°F) (for 001 only)					110
Total Iron			Monitor and Report		
Dissolved Iron					7.0
pH	not less than 6.0 nor greater than 9.0				

Outfalls 002 and 003: existing discharge, average flow of 0.0004 mgd (002) and 0.00004 mgd (003).

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Total Suspended Solids			30		60
Phenols			Monitor and Report		
pH	not less than 6.0 nor greater than 9.0				

Outfalls 005—007: existing discharge of varied flows.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Total Suspended Solids			Monitor and Report		

Outfalls 004 and 008 shall consist solely of uncontaminated stormwater.

The EPA waiver is in effect.

PA0046019, Industrial Waste, SIC, 5541, 5812, 5399, **North East, LLC**, One Center Drive, North East MD 21901. This application is for renewal of an NPDES permit to discharge treated sewage, stormwater runoff and garage floor drainage from Smithton Travel Plaza in South Huntingdon Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, drainage swale to UNT (Dutch Hollow) to Youghiogheny River (001—006), classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is McKeesport Municipal Water Authority, located on the Youghiogheny River.

Outfall 001: existing discharge, design flow of 0.020 mgd.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
BOD ₅			10		20
Suspended Solids			10		20
Ammonia Nitrogen					
(5-1 to 10-31)			3		6
(11-1 to 4-30)			9		18
Fecal Coliform					
(5-1 to 9-30)	200/100 ml as a geometric mean				
(10-1 to 4-30)	2,000/100 ml as a geometric mean				
Total Residual Chlorine			1.4		3.3
Dissolved Oxygen					
pH	not less than 5.0 mg/l not less than 6.0 nor greater than 9.0				

Outfall 002: existing discharge, vehicle fuel island area storm runoff and garage floor drains through oil/water separators.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
CBOD ₅			25		50
Total Suspended Solids			35		70
Oil and Grease			15		30
Nitrate-Nitrite Nitrogen			Monitor and Report		
pH	not less than 6.0 nor greater than 9.0				

Outfall 003: existing discharge, parking area stormwater runoff through oil/water separator.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
CBOD ₅			25		50
Oil and Grease			15		30
Nitrate-Nitrite Nitrogen			Monitor and Report		
pH	not less than 6.0 nor greater than 9.0				

Outfalls 004—006: existing discharges, parking area stormwater runoff.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Nitrate-Nitrite Nitrogen			Monitor and Report		

The EPA waiver is in effect.

PA0217948-A1, Industrial Waste, SIC 4941, **Highridge Water Authority**, 17 Maple Avenue, Blairsville, PA 15717. This application is for an NPDES permit to discharge treated process wastewater, untreated stormwater runoff and untreated surface water diverted to the Sugar Run Reservoir in St. Clair Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, UNT to Conemaugh River 44984, classified as a CWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is the Buffalo Township Municipal Authority, located on Allegheny River, about 40 miles below the discharge point.

Outfall 001: existing discharge, design flow of 0.165 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Total Suspended Solids			30		60
Iron, total			2.0		4.0
Aluminum			4.0		8.0
Manganese			1.0		2.0
Total Residual Chlorine			0.5		1.0
pH (standard unit)	not less than 6.0 nor greater than 9.0 standard units				

Outfalls 002 and 003: existing stormwater discharge, design flow of varied mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
The discharge through these outfalls shall consist of uncontaminated stormwater runoff only.					

Outfall 004: existing emergency-only discharge from finished water storage tank, design flow of varied mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Total Suspended Solids			30		60

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Iron, total			2.0		4.0
Aluminum			4.0		8.0
Manganese			1.0		2.0
Total Residual Chlorine			0.5		1.0
pH (standard unit)	not less than 6.0 nor greater than 9.0 standard unit				

Outfall 006: existing stream diversion discharge, design flow of 0.634 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)		0.634			
pH (standard unit)	Monitor and Report				

Outfall 007: existing stream diversion discharge, design flow of 0.688 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)		0.688			
pH (standard unit)	Monitor and Report				

The EPA waiver is in effect.

PA0036307-A1, Sewage, **Municipal Authority of the Township of Robinson**, P. O. Box 15539, Pittsburgh, PA 15244-0539. This application is for amendment of an NPDES permit to discharge treated sewage from Moon Run Sewage Treatment plant in Moon Township, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Moon Run, which are classified as WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Nova Chemicals, Beaver Valley Plant, on the Ohio River.

Outfall 001: existing discharge, proposed expanded design flow of 0.6 mgd.

The following effluent limitations will apply when the treatment plant is expanded to a flow of 0.6 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD ₅	25	38		50
Suspended Solids	30	45		60
Ammonia Nitrogen				
(5-1 to 10-31)	2.0	3.0		4.0
(11-1 to 4-30)	3.5	5.3		7.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA0090018, Sewage, **North Strabane Municipal Authority**, 1929B Route 519 South, Canonsburg, PA 15317. This application is for renewal of an NPDES permit to discharge treated sewage from Willolake Sewage Treatment Plant in North Strabane Township, **Washington County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as UNT of Chartiers Creek, which are classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the West View Municipal Authority located on the Ohio River.

Outfall 001: existing discharge, design flow of 0.14 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>
CBOD ₅	10	15	20
Suspended Solids	25	37.5	50
Ammonia Nitrogen			
(5-1 to 10-31)	2.0	3.0	4.0
(11-1 to 4-30)	3.5	5.3	7.0
Fecal Coliform			
(5-1 to 9-30)	200/100 ml as a geometric mean		
(10-1 to 4-30)	2,000/100 ml as a geometric mean		
Dissolved Oxygen	not less than 5.0 mg/l		
pH	not less than 6.0 nor greater than 9.0		

The EPA waiver is in effect.

III. WQM Industrial Waste and Sewerage Applications Under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

WQM Permit No. WQG01490602, Sewerage, **Penns Tavern**, 420 Whiskey Ridge Road, Middleburg, PA 17842. This proposed facility is located in Lower Augusta Township, **Northumberland County**.

Description of Proposed Action/Activity: The proposed system consists of a 1,000 gallon septic tank, a 1,000 gpd aerobic tank, a 500 gallon pump tank, a 864 square foot sand filter, an erosion chlorinator and a chlorine contact tank, with a stream discharge.

IV. NPDES Applications for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

V. Applications for NPDES Waiver Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

VI. NPDES Individual Permit Applications for Discharges of Stormwater Associated with Construction Activities

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Northampton County Conservation District: Greystone Bldg., Gracedale Complex, Nazareth, PA 18064-9211, (610) 746-1971.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024806032	T & B Associates 2299 Brodhead Road Suite C Bethlehem, PA 18020	Northampton	Lower Nazareth Township	Bushkill Creek HQ-CWF
PAS804801	The Pennsylvania State University University Park Airport 2535 Fox Hollow Road State College, PA 16803	Centre	Benner, Patton and College Townships	Big Hollow and UNT to Spring Creek (CWF) and Buffalo Run (CWF-HQ)

VII. List of NOIs for NPDES and/or Other General Permit Types

PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

PUBLIC WATER SUPPLY (PWS) PERMIT

Under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17), the following parties have applied for a PWS permit to construct or substantially modify a public water system.

Persons wishing to comment on a permit application are invited to submit a statement to the office listed before the application within 30 days of this public notice.

Comments received within the 30-day comment period will be considered in the formulation of the final determinations regarding the application. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of Environmental Protection (Department) of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and any related documents are on file at the office listed before the application and are available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability who require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

SAFE DRINKING WATER

Applications Received Under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17)

Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Permit No. 6306502MA, Public Water Supply.

Applicant	Pennsylvania-American Water Company 800 West Hersheypark Drive Hershey, PA 17033
Township or Borough	Jefferson Township
Responsible Official	Scott M. Thomas, Operations Engineer Pennsylvania-American Water Company 800 West Hersheypark Drive Hershey, PA 17033
Type of Facility	Avella water storage tank
Consulting Engineer	
Application Received Date	October 23, 2006
Description of Action	Blasting and painting of the Avella Tank.

Permit No. 3206501MA, Public Water Supply.

Applicant	Pennsylvania-American Water Company 800 West Hersheypark Drive Hershey, PA 17033
Township or Borough	White Township
Responsible Official	Scott M. Thomas, Operations Engineer Pennsylvania-American Water Company 800 West Hersheypark Drive Hershey, PA 17033
Type of Facility	Pleasant Hills water storage tank
Consulting Engineer	
Application Received Date	October 23, 2006
Description of Action	Blasting and painting of the Pleasant Hills Tank.

Permit No. 0206512, Public Water Supply.

Applicant	Findlay Township Municipal Authority 1271 Route 30 P. O. Box 409 Clinton, PA 15026
Township or Borough	Findlay Township
Responsible Official	Patrick O'Farrell, Authority Chairperson Findlay Township Municipal Authority 1271 Route 30 P. O. Box 409 Clinton, PA 15026
Type of Facility	Potato Garden Run Phase I Water System
Consulting Engineer	NIRA Consulting Engineers, Inc. 950 Fifth Avenue Coraopolis PA 15108
Application Received Date	October 17, 2006
Description of Action	Installation of 24,700 feet of 12 inch and 16 inch ductile iron transmission line, a 1.5 MG water standpipe, disinfection facility and booster pump station.

MINOR AMENDMENT

Applications Received Under the Pennsylvania Safe Drinking Water Act

Northeast Region: Water Supply Management Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Application No. Minor Amendment.

Applicant	Zack Group, Inc Black Creek Township Luzerne County
Responsible Official	Thomas Sawchak 247 Kathleen Drive Peckville, PA 18452
Type of Facility	Community Water System
Consulting Engineer	N/A
Application Received Date	October 31, 2006
Description of Action	Application for transfer of the community water system serving Zack's Rock Glen Manor from Joyce Zakrewsky to Zack Group, Inc.

Application No. Minor Amendment

Applicant	Pennsylvania American Water Co. Hamilton Township Monroe County
Responsible Official	Paul A. Zielinski PAWC 800 West Hersheypark Drive Hershey, PA 17033
Type of Facility	Public Water System

Consulting Engineer Scott M. Thomas, P. E.
PAWC
852 Wesley Drive
Mechanicsburg, PA 17055

Application Received 10/24/2006
Date

Description of Action PAWC proposes to
repaint/rehabilitate the existing
0.5 MG storage tank known as
Stony Garden Tank No. 2.

WATER ALLOCATIONS

Applications received under the act of June 24, 1939 (P.L. 842, No. 365) (35 P.S. §§ 631—641) relating to the acquisition of rights to divert waters of this Commonwealth.

Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

WA65-1000A, Water Allocations. **Youngstown Borough Water Authority**, P.O. Box 82, Youngstown, PA 15696, **Westmoreland County**. The applicant is requesting the right to purchase 500,000 gallons of water per day, peak month (30-day), from Latrobe Borough Municipal Authority.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 1

Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101—6026.908).

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the Background Standard, Statewide Health Standard, the Site-Specific Standard or who intend to remediate a site as a special industrial area must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, a combination of the cleanup standards or who receives approval of a special industrial area remediation identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period

for sites proposed for remediation using a Site-Specific Standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified, proposed for remediation to a Site-Specific Standard or as a special industrial area, the municipality within which the site is located may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period, the municipality may request that the person identified as the remediator of the site develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional office before which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

Polysat, City of Philadelphia, **Philadelphia County**. Craig Herr, RT Env., Svc., Inc., 215 W Church Road, King of Prussia, PA 19406 has submitted a Notice of Intent to Remediate. Groundwater at the site has been impacted by release of other organics and semivolatile organics. The intended future use of the property will continue to be nonresidential.

Essington Ave Prop Redev, Project, City of Philadelphia, **Philadelphia County**. Gerald Kirkpatrick, Env. Svc., Inc., 1140 Valley Forge Road, P.O. Box 810, Valley Forge, PA 19482 on behalf of Kevin Kyle, Essington Ave., Partners, LLP, 2701 Renaissance Blvd., 4th Floor, King of Prussia, PA 19406 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site has been impacted by release of VOCs, PAHs and metals. The future use of the land at the site is expected to be nonresidential/commercial.

Dupont Glenolden Facility, Glenolden Borough, **Delaware County**. Paul Michaels, Jacques Whitford Company, 450 S. Gravers Road, Suite 105, Plymouth Meeting, PA 19462 on behalf of Kyle Rosato University of Pennsylvania, 3160 Chestnut St., Suite 400, Philadelphia, PA 19104 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted by release of arsenic, VOCs and PAHs. The future use of the property will remain the same.

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Steelton Highspire Elementary School, Steelton Borough, **Dauphin County**. Pennoni Associates, Inc., 3001 Market Street, Philadelphia, PA 19104, on behalf of Steelton Highspire School District, Swatara Street and Reynders Avenue, Steelton, PA 17113, submitted a Notice of Intent to Remediate site soils contaminated with PAHs and benzo(a)pyrene. The applicant seeks to remediate the site to a Site-Specific Standard. The property is an elementary school and will remain a school in the future.

Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

McMurray Town Center, Borough of McMurray, **Washington County**. Mark S. Holsing, Skelly and Loy, Inc., 2500 Eldo Road, Suite 2, Monroeville, PA 15146 on behalf of Brian Clinton, WIN DB, Ltd., a Florida Limited Partnership, 2901 Rigsby Lane, Safety Harbor, Florida 34695, and Geno Levi, Geno Levi Sal, 232 Fox Run, Venetia, PA 15367 has submitted a Notice of Intent to Remediate soil and groundwater contamination from a historical retail petroleum sales facility. Impact to soil and groundwater in excess of MSC's were identified as a result of leaded or unleaded gasoline releases. The site is intended to be a commercial development.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Application Received Under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and regulations to operate solid waste processing or disposal area or site.

Southeast Region: Regional Solid Waste Manager, 2 East Main Street, Norristown, PA 19401.

Permit Application No. 101662. Conshohocken Rail, LLC, 1025 Bundy Road, Youngstown, OH 44509, Plymouth Township, **Montgomery County**. A major permit modification was received for the proposed rail transfer of construction and demolition waste at the existing Conshohocken Rail, LLC transfer facility. The application was received by Southeast Regional Office on October 31, 2006.

AIR QUALITY

PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

NEW SOURCES AND MODIFICATIONS

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State operating permit and Title V operating permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department has received applications for plan approvals and/or operating permits from the following facilities.

Copies of the applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the regional office identified in this notice. Persons interested in reviewing the application files should contact the appropriate regional office to schedule an appointment.

Persons wishing to receive a copy of a proposed plan approval or operating permit must indicate their interest to the Department regional office within 30 days of the date of this notice and must file protests or comments on a proposed plan approval or operating permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first.

Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Comments or protests filed with the Department regional offices must include a concise statement of the objections to the issuance of the Plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the regional office identified before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121—143, the Federal Clean Air Act and regulations adopted under the act.

PLAN APPROVALS

Plan Approval Applications Received under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B that may have special public interest. These applications are in review and no decision on disposition has been reached.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Ronald Davis, New Source Review Chief, (717) 705-4702.

06-05025B: Morgan Corp. (P. O. Box 588, 35 Thousand Oaks Boulevard, Morgantown, PA 19543-0588) for installation of a new paint booth with High Volume Low Pressure spray guns in Caernarvon Township, **Berks County**. This source will be controlled by the use of dry filters to control PM emissions.

Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Thomas McGinley, New Source Review Chief, (484) 250-5920.

09-0122B: Arkema, Inc. (100 PA Route 413, Bristol, PA) for optimization of the spray dryer process in Bristol Township, **Bucks County**. This facility is a Title V facility. This installation will result in VOC emissions increase of less than 6 tons per year. The Plan approval and operating permit will contain recordkeeping and operating restriction designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701, David Aldenderfer, Program Manager, (570) 327-3637.

19-304-008E: Benton Foundry, Inc. (5297 SR 487, Benton, PA 17814-9550) for construction of a new 100 ton per hour sand muller, one mold making system and three PUCB core machines to be controlled by a packed bed amine scrubber at their facility in Sugarloaf Township, **Columbia County**. The plan approval application also

proposes to modify existing sources at the foundry to increase production from 30,000 tons of metal to 45,000 tons of metal used to produce metal castings in any 12-consecutive month period. Additionally, the company proposes to install three new fabric collectors to control particulate emissions. The new fabric collectors will replace three existing fabric collectors, which used to control particulate emissions at the facility. The facility is a State-only facility.

The Department of Environmental Protection's (Department) review of the information contained in the application submitted by Benton Foundry indicates that the sources and the air-cleaning devices will comply with all applicable air quality requirements pertaining to air contamination sources and the emission of air contaminants, including the best available technology (BAT) requirements of 25 Pa. Code §§ 127.1 and 127.12, the fugitive air contaminant emission requirement of 25 Pa. Code § 123.1, the PM emission limitation of 25 Pa. Code § 123.13 and the visible emission limitation of 25 Pa. Code § 123.41. The plan approval, if issued, will subsequently be incorporated in an operating permit by means of an administrative amendment in accordance with 25 Pa. Code § 127.450 at a later date.

Based upon this finding, the Department proposes to issue plan approval for the construction of a new 100 ton per hour sand muller, one mold making system and three PUCB core machines to be controlled by a packed bed amine scrubber, the installation of the three new fabric collectors, and the modification of the existing foundry sources to increase the production at the foundry. The following is a summary of the conditions the Department proposes to place in the plan approval to be issued to ensure compliance with all applicable regulatory requirements:

1. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the permittee shall not pour more than 45,000 tons of metal into the molds in any 12-consecutive month period. Additionally, the sources at the facility shall not operate in excess of 6,000 hours in any 12-consecutive month period. This condition supersedes conditions Nos. 10 and 13 of operating permit 19-304-008B.

2. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the permittee shall not process in excess of 315,000 tons of sand in any 12-consecutive month period from all sources at the facility.

3. The permittee shall not emit equal or greater than 100 tons of CO in any 12-consecutive month period. Additionally, the permittee shall not emit PM/PM10 in any 12-consecutive month period. This condition supersedes condition No. 11 of operating permit 19-304-008B.

4. The permittee shall keep records of the following information:

- a. The amount of metal poured into the molds each month and the corresponding totals in any 12-consecutive month period.

- b. The amount of hours the sources at the foundry are operated each month and the corresponding totals in any 12-consecutive month period.

- c. The amount of sand processed from all sources at the facility each month and the corresponding totals in any 12-consecutive month period

- d. The total CO emissions from all sources at the facility each month and the corresponding totals in any 12-consecutive month period.

- e. The total PM/PM10 emissions from all sources at the facility each month and the corresponding totals in any 12-consecutive month period.

These records shall be retained for a minimum of 5 years and shall be presented to the Department upon request.

5. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, Source ID P110 shall consist of the following sources:

- a. Two four ton Electric Induction Furnaces.

- b. Two ten ton Electric Induction Furnaces.

- c. One 5.6 mmBtu/hr Vanetta propane fired scrap dryer.

- d. One 7.35 mmBtu/hr Vanetta propane fired scrap dryer.

- e. One 100 ton per hour Beardsley and Piper model 100B-250 sand muller

- f. One 100 ton per hour Beardsley & Piper model 100-B sand muller

The air contaminant emissions from all sources listed above shall be controlled by a Dustex model 3600-14-70 fabric collector (ID C110).

6. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the PM emissions from the exhaust of the Dustex model 3600-14-70 fabric collector (ID C110) associated with Source ID P110 shall not exceed 0.005 grain per dry standard cubic foot. Additionally, there shall be no visible emissions from the exhaust of the Dustex model 3600-14-70 fabric collector (ID C110).

7. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, Source ID P120 shall consist of the following sources and are located in the finishing department.

- a. Eight Fox/Vulcan Grinders.

- b. One Burr King model 960-400 belt grinder.

- c. One Wheelabrator 14 cubic foot super tumblast machine.

- d. One Wheelabrator 28 cubic foot super tumblast machine.

- e. One Wheelabrator spinner hanger.

The air contaminant emissions from the sources listed above shall be controlled by a Dustex model PC-100 cyclone (ID C120A) and a Dustex model 3630-14-30 fabric collector (ID C120B) operating in series.

8. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the PM emissions from the exhaust of the existing Dustex model 3630-14-30 fabric collector (ID C120B) associated with Source ID P120 shall not exceed 0.01 grains per dry standard cubic foot. Additionally, there shall be no visible emissions from the exhaust of the Dustex model 3630-14-30 fabric collector (ID C120B) associated with Source ID P120. This condition supersedes condition No. 9 of operating permit 19-304-008B.

9. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, Source ID P130 is a sand handling operation and shall consist of the following sources:

- a. Magnetic separator.

- b. 1st and 2nd screens.

- c. General Kinematics model #SCSC72 sand cooler.

- d. Sand cooler discharge belt.

- e. Three sand tanks.
- f. Two bucket elevators.
- g. Casting conveyor transfer point.
- h. Sand cooler inlet belt.
- i. Blender belt.
- j. Didion model No. MD-100 shake out drum.
- k. Didion sand discharge conveyor.
- l. Didion sand discharge side draft hood.

The air contaminant emissions from the sources listed above shall be controlled by two Dustex model 3600-14-70 fabric collectors (IDs C130A and C130B) operating in parallel.

10. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the PM emissions from each of the exhausts of the two Dustex model 3600-14-70 fabric collectors (ID C130A and C130B) associated with Source ID P130 shall not exceed 0.005 grain per dry standard cubic foot. Additionally, there shall be no visible emissions from the exhausts of the two Dustex model 3600-14-70 fabric collectors (ID C130A and C130B) associated with Source ID P130.

11. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the permittee shall equip the Dustex model 3600-14-70 fabric collector (ID C110), the Dustex model 3630-14-30 fabric collector (ID C120B), and the two Dustex model 3600-14-70 fabric collectors (ID C130A and C130B) with instrumentation which continuously monitors the pressure drop across the collectors.

12. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the permittee shall record the pressure drop across the Dustex model 3600-14-70 fabric collector (ID C110), the Dustex model 3630-14-30 fabric collector (ID C120B), and the two Dustex model 3600-14-70 fabric collectors (ID C130A and C130B) at least once per day. These records shall be kept onsite for a minimum of 5 years and shall be presented to the Department upon request.

13. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the permittee shall keep on hand a sufficient number of spare fabric collector bags to replace any bag of the fabric collectors that requires replacement immediately.

14. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the air compressor that supplies compressed air to the fabric collectors shall be equipped with an air dryer and oil trap.

15. (a) Within 120 days of the installation of the fabric collectors (ID C110, C120, C130A and C130B), the permittee shall conduct particulate matter stack testing (EPA Method 5) upon the exhaust of each fabric collectors to determine compliance with the PM emission limitations for the collectors associated with the sources.

(b) At least 60 days prior to the performance of the stack testing required by this condition, a test plan shall be submitted to the Department for evaluation. The plan shall contain a description of the proposed test methods and dimensioned drawings or sketches showing the test port locations.

(c) The Department shall be given at least 14 days advance notice of the scheduled dates for the performance of the stack testing required by this condition.

(d) Within 60 days of the completion of the stack tests required by this condition, two copies of the test reports

shall be submitted to the Department. The reports shall contain the results of the tests, a description of the testing and analytical procedures actually used in performance of the tests, all process and operating data collected during the tests, a copy of all raw data and a copy of all calculations generated during data analysis.

16. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, Source ID P150 is a shell coremaking operation and shall consist of the following sources:

- a. Four B and P model SF6 machines.
- b. Two B and P model 104 machines.
- c. One propane fired shell core oven.

The only resin to be used in the shell core making operations (Source ID P150) shall be Borden Super F E19E19 unless prior approval is granted by the Department to use an alternative resin. Additionally, the core oven associated with the shell core making operations (Source ID P150) shall only be fired on propane.

17. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12 Source ID P160 is a Palmer mixer model M-200 pepset coremaking machine. The only binders to be used in Source ID P160 shall be Pepset 1,670 and Pepset 2,670 unless prior approval is granted by the Department to use alternative binders. Additionally, the only catalyst to be used shall be Pepset Catalyst 3,850 unless prior approval has been granted by the Department to use an alternative catalyst.

18. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, Source ID P170 is a mold making operation and shall consist of the following sources:

- a. One Hunter model HMP10C mold machine.
- b. One Hunter model HM10C mold machine.
- c. One Hunter model HMP20C mold machine.
- d. One B & P model 2016 Mach Blomate mold machine.
- e. Three Osborne model 3161-12 mold machines.
- f. Two International squeeze machines.
- g. Two Disamatic model 130 mold machines.

The mold making operation includes the use of a mold release agent. The only mold release agent to be used in Source ID P170 shall be International Foundry Supply No. 4 liquid Parting mold release agent unless prior approval is granted by the Department to use an alternative mold release agent.

19. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the VOC emissions from the mold making operations (Source ID P170) shall not exceed 10.21 tons in any 12-consecutive month period. Additionally, the permittee shall not use more than 5,250 gallons of International Foundry Supply No. 4 liquid Parting mold release agent in any 12-consecutive month period.

20. The permittee shall keep record of the following:

a. The amount of mold release agent used each month and the corresponding totals in any 12-consecutive month period to verify compliance with the 12-consecutive month usage limitation.

b. The VOC emissions from the mold making operations (Source ID P170) each month and the corresponding totals in any 12-consecutive month period to verify compliance with the 12-consecutive month VOC emission limitation.

c. The MSDS and CPDS for the mold release agent used in Source ID P170.

These records shall be kept on site for a minimum of 5 years and shall be presented to the Department upon request.

21. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the permittee shall use causticized lignite as a seacoal replacement in the process sand. The causticized lignite shall be at least 22.5% by weight of the carbonaceous material.

22. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, Source ID P180 consists of the Pouring/Cooling/Shakeout operations at the facility. Additionally, the permittee shall not emit the following air contaminants in excess of the following rates from the Pouring/Cooling/Shakeout operations (Source ID P180).

- a. CO—89.78 tons in any 12-consecutive month period.
- b. NO_x—0.23 tons in any 12-consecutive month period.
- c. SO_x—0.45 tons in any 12-consecutive month period.
- d. VOCs—14.01 tons in any 12-consecutive month period
- e. Total HAPs—9.17 tons in any 12-consecutive month period

23. The permittee shall keep records of the emissions of CO, NO_x, SO_x, VOCs and total HAPs each month and the corresponding totals in any 12-consecutive month period to verify compliance with CO, NO_x, SO_x, VOC and HAPs emission limitations in any 12-consecutive month period. These records shall be kept on site for a minimum of 5 years and shall be presented to the Department upon request.

24. Source ID P140 is a Isocure coremaking operation consisting of the following:

- a. One B and P model SB6 CC129 machine.
- b. One B and P model SB6 CC120 machine.
- c. One B and P model SB6 CC131 machine.
- d. One B and P model SB CC112 machine.
- e. One Gaylord model SATO-155 machine.
- f. Three new Gaylord model 24VTBS machines.

25. Under to BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the air contaminant emissions from all core machines of Source ID P140 shall be controlled by a new Gaylord Foundry Equipment model 15000A-3 packed tower amine scrubber (ID C140). The new scrubber shall be installed and operated no later than December 31, 2007. However, the above sources shall be controlled by the existing Gaylord model 6000A-3 amine counter current vertical packed bed scrubber until the new scrubber will install and operated. The existing scrubber shall be operated as specified in operating permit 19-304-008E.

26. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the total combined VOC and total HAP emissions from the Isocure coremaking operations (Source ID P140) shall not exceed 5.06 tons and 0.48 ton in any 12-consecutive month period respectively.

27. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the pH of the scrubbing solution used in the new Gaylord Foundry Equipment model 15000A-3 packed tower amine scrubber (ID C140) shall not be greater than 4.5 at any time the scrubber is in operation.

28. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the new Gaylord Foundry Equipment model

15000A-3 packed tower amine scrubber's (ID C140) flow rate shall be at least 190 gallons per minute.

29. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the new Gaylord Foundry Equipment model 15000A-3 packed tower amine scrubber (ID C140) shall be equipped with instrumentation which continuously monitors the flow rate and pH of the scrubbing solution.

30. The permittee shall keep records of the following:

- a. The pH of the scrubbing solution in the new Gaylord Foundry Equipment model 15000A-3 packed tower amine scrubber (ID C140) (to be recorded once per day.)
- b. The identity of the binders and catalyst used in the Isocure coremaking operation (Source ID P140).
- c. The flow rate of the scrubbing solution of new Gaylord Foundry Equipment model 15000A-3 packed tower amine scrubber's (ID C140) recirculation system (to be recorded once per day.)

These records shall be kept on site for a minimum of 5 years and shall be presented to the Department upon request.

31. Source ID P200 consists of the surface coating operations. The surface coating operations are subject to the requirements of 25 Pa. Code § 129.52 relating to surface coating operations. The permittee shall comply with all applicable requirements of 25 Pa. Code § 129.52 including the recordkeeping requirements of 25 Pa. Code § 129.52(c).

32. Conditions contained in operating permit 19-304-004B remain in effect unless superseded or amended by conditions contained herein. If there is a conflict between a condition or requirement contained in the plan approval and a condition contained in operating permit 19-304-008B, the permittee shall comply with the condition or requirement contained in this plan approval rather than the conflicting condition or requirement contained in operating permit 19-304-008B.

A copy of the plan approval application and the Department's review is available for public review between 8 a.m. and 4 p.m. at the Department's Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review may be made by calling the Department at (570) 327-3693. Written comments or requests for a public hearing should be directed to Muhammad Q. Zaman, Chief, Facilities Permitting Section, Department of Environmental Protection, Air Quality Program, Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-0512.

17-302-024: Clearfield Area School District (438 River Road, Clearfield, PA 16830) for the construction of a 10 million Btu per hour wood-fired boiler at the Clearfield Middle School in Lawrence Township, **Clearfield County**.

The school is not a major (Title V) facility for any air contaminant.

PM emissions from the boiler will be controlled by a cyclone collector. The air contaminant emissions from the boiler, after control, are not expected to exceed 5.98 tons of NO_x, 5.39 tons of CO, 9.86 tons of PM₁₀, .13 ton of VOC_x and .07 ton of SO_x per year.

The Department of Environmental Protection's (Department) review of the information submitted by the Clearfield Area School District indicates that the proposed boiler should comply with all applicable regulatory requirements pertaining to air contamination sources and

the emission of air contaminants including the best available technology requirement of 25 Pa. Code §§ 127.1 and 127.12. Based on this finding, the Department proposes to issue plan approval.

The following is a summary of the conditions the Department proposes to place in a plan approval to be issued to ensure compliance with all applicable regulatory requirements:

1. The boiler shall only be fired on green or kiln-dried virgin wood. At no time shall particleboard, flakeboard, wood treated with a preservative, coated wood, wood with laminate attached, construction and demolition waste or any other material (other than green or kiln-dried virgin wood) be burned in the boiler.

2. The boiler shall not be operated more than 6,576 hours in any 12-consecutive month period.

3. The cyclone collector shall be equipped with instrumentation to monitor the pressure differential across the collector on a continuous basis.

4. The PM emissions from the boiler shall not exceed .3 pound per million Btu of heat input, the NO_x emissions shall not exceed .182 pound per million Btu of heat input and the CO emissions shall not exceed .164 pound per million Btu of heat input. Additionally, PM, NO_x and CO emissions shall not exceed 9.86, 5.98 and 5.39 tons, respectively, in any 12-consecutive month period.

5. The collected ash discharge system incorporated in the cyclone collector shall remain sealed from the open air at all times except when changing ash containers.

6. Within 180 days of commencement of boiler operation, the permittee shall perform stack testing upon the boiler to determine its particulate matter emission rate.

7. Comprehensive accurate records shall be maintained of the number of hours the boiler is operated each month as well as the amount of wood burned each month.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 685-9476.

Clean Earth of Philadelphia (3201 South 61st Street, Philadelphia, PA 19153) to Increase the allowable SO₂ emission rate for the Thermal Desorption Unit from 18.2 pounds per hour and 45 tons per rolling 12-month period to 57.0 pounds per hour and 97 tons per rolling 12-month period in the City of Philadelphia, **Philadelphia County**. The SO₂ emission concentration limits will remain a monthly average of 310 ppm of SO₂ by volume adjusted to 12% CO₂ and annual average of 250 ppm of SO₂ by volume adjusted to 12% CO₂. The plan approval will contain operating, testing, monitoring and recordkeeping requirements to ensure operation within all applicable requirements.

OPERATING PERMITS

Intent to Issue Title V Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Mark Wejksner, New Source Review Chief, (570) 826-2531.

54-00009: Omnova Solutions, Inc. (95 Hickory Drive, Auburn, PA 17922) for a renewal Title V Operating Permit for a decorative building products facility in West Brunsick Township, **Schuylkill County**. The facility sources include: two boilers, one hot oil furnace, one

pump house heater, two printer lines, four calender lines, three embosser lines, one ink mix room, one UV coater, one proof press, two storage tanks, seven emergency generators, two water pumps, one surface coating line/mix room and one thermal oxidizer. These sources have the potential to emit major quantities of VOC emissions above the Title V emission thresholds. The proposed renewal Title V Operating Permit contains all applicable requirements including Federal and State regulations. In addition, monitoring, recordkeeping and reporting conditions regarding compliance with all applicable requirements are included.

Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Ronald Davis, New Source Review Chief, (717) 705-4702.

22-03017: Hoover Funeral Homes & Crematory, Inc. (6011 Linglestown Road, Harrisburg, PA 17112) for operation of a human crematory in Lower Paxton Township, **Dauphin County**. This action is a renewal of the previous operating permit issued in 2001.

COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of an application is available for inspection at the district mining office indicated before an application. Where a 401 Water Quality Certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for certification.

Written comments, objections or requests for informal conferences on applications may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the district mining office indicated before an application within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121-77.123 and 86.31—86.34.

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. NPDES permits will contain, at a minimum, technology-based effluent limitations as identified in this notice for the respective coal and noncoal applications. In addition, more restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining

which may occur will be incorporated into a mining activity permit, when necessary, for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies who have requested review of NPDES permit requirements for a particular mining activity within the previously mentioned public comment period will be provided with a 30-day period to review and submit comments on the requirements.

Written comments or objections should contain the name, address and telephone number of the person submitting comments or objections; the application number; and a statement of sufficient detail to inform the

Department on the basis of comment or objection and relevant facts upon which it is based. Requests for an informal conference must contain the name, address and telephone number of requestor; the application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor wishes to have the conference conducted in the locality of the proposed mining activities.

Coal Applications Received

Effluent Limits—The following coal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
pH			
Alkalinity greater than acidity*		greater than 6.0; less than 9.0	

* The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to: (1) surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas; active areas disturbed by coal refuse disposal activities; and mined areas backfilled and revegetated; and (2) drainage (resulting from a precipitation event of less than or equal to a 1-year 24-hour event) from coal refuse disposal piles.

California District Office: 25 Technology Drive, Coal Center, PA 15423, (724) 769-1100.

30841602 and NPDES Permit No. PA0215562. Duquesne Light Company (P. O. Box 547, Greensboro, PA 15338). To renew the permit for the Warwick Mine No. 2 Preparation Plant in Monongahela Township, **Greene County** and related NPDES permit for water treatment and reclamation only. No additional discharges. Application received: October 6, 2006.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.

Permit No. 56010105 and NPDES No. PA0249068. Godin Bros, Inc. (128 Colton Drive Stoystown, PA 15563). Permit renewal for reclamation only of a bituminous surface mine in Jenner Township, **Somerset County**, affecting 34.8 acres. Receiving stream: UNTs to/and Quemahoning Creek, classified for the following uses: CWF. The first downstream potable water supply intake from the point of discharge is Cambria-Somerset Authority Quemahoning. Application received: October 27, 2006.

Permit No. 56860104 and NPDES No. PA0597601. Action Mining, Inc. (1117 Shaw Mines Road, Meyersdale, PA 15552-7228). Permit renewal for reclamation only of a bituminous surface mine and maintain passive water treatment in Brothersvalley and Summit Townships, **Somerset County**, affecting 507 acres. Receiving streams: UNTs to/and Blue Lick Creek, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received: October 30, 2006.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.

03860111 and NPDES Permit No. PA0589144. State Industries, Inc. (P. O. Box 1022, Kittanning, PA 16201). Revision application to operations and to add fly ash to an existing bituminous surface mine, located in East Franklin Township, **Armstrong County**, affecting 667.4 acres. Receiving streams: UNT to Allegheny River, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Revision application received: November 6, 2006.

03060104 and NPDES Permit No. PA0250996. Short Brothers, Inc. (15 Rayne Run Road, Marion Center, PA 15759). Application for commencement, operation and reclamation of a bituminous surface mine, located in Manor and Kittanning Townships, **Armstrong County**, affecting 85.4 acres. Receiving streams: UNTs water supply intake within 10 miles downstream from the point of discharge. Application received: November 6, 2006.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.

54061302 and NPDES Permit No. PA0224341. Rausch Creek Land, LP (978 Gap Street, Valley View, PA 17983). Commencement, operation and restoration of an anthracite underground mine operation and NPDES Permit for discharge of treated mine drainage in Porter Township, **Schuylkill County** affecting 756.0 acres, receiving stream: Wiconisco Creek, classified for the following use: CWF. Application received: October 20, 2006.

Effluent Limits

The following noncoal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

<i>Parameter</i>	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
suspended solids	35 mg/l	70 mg/l	90 mg/l
Alkalinity exceeding acidity ¹			
pH ¹		greater than 6.0; less than 9.0	

¹ The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to surface runoff resulting from a precipitation event of less than or equal to a 10-year 24-hour event. If coal will be extracted incidental to the extraction of noncoal minerals, at a minimum, the technology-based effluent limitations identified under coal applications will apply to discharges of wastewater to streams.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.

8074SM2C5 and NPDES Permit No. PA0012904. Highway Materials, Inc. (1750 Walton Road, Blue Bell, PA 19422). Renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Whitemarsh Township, **Montgomery County**, receiving streams: Lorraine Run, classified for the following use: TSF and UNT of Plymouth Creek, classified for the following use: WWF. Application received: November 8, 2006.

FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department of Environmental Protection (Department). Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341) requires the State to certify that the involved projects will not violate the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Persons objecting to approval of a request for certification under section 401 of the FWPCA or to the issuance of a Dam Permit, Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment must submit comments, suggestions or objections within 30 days of the date of this notice, as well as questions, to the regional office noted before the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Individuals will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 8 a.m. and 4 p.m. on each working day at the regional office noted before the application.

Persons with a disability who wish to attend a hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the

specified program. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401(a) of the FWPCA (33 U.S.C.A. § 1341(a)).

WATER OBSTRUCTIONS AND ENCROACHMENTS

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

E09-904. David R. Anderson, 27 Ring's End Road, Darien, CT 06820, Springfield Township, **Bucks County**, ACOE Philadelphia District.

To construct and maintain 24 linear feet of twin 29 inch by 45 inch reinforced concrete pipe arch culvert in and along a UNT to Cooks Creek (EV) for the driveway access to a proposed single family residence. This project is located approximately 1,500 feet south of the intersection Adam's Way and SR 212. (Hellertown, PA USGS Quadrangle N: 11.1 inches, W: 2.5 Inches).

E46-766. Manufacturers Golf & CC, 511 Dreshtown Road, Fort Washington, PA 19034-0790, Upper Dublin Township, **Montgomery County**, ACOE Philadelphia District.

To modify the cross section of the 100-year floodway along Sandy Run (TSF by excavating near holes 10 and 17 at the manufacturers golf course as part of an effort to restore a 300-foot segment of stream with natural channel design techniques. This project is located approximately 2,000 feet east of the intersection twining road and SR 152 (Ambler, Pa USGS Quadrangle N: 2.5 inches; W: 6.4 inches).

E09-903. Department of Transportation, 7000 Geerdes Boulevard, King of Prussia, PA 19406, Upper Makefield Township, **Bucks County**, ACOE Philadelphia District.

To construct and maintain a replacement for an existing bridge, SR 0032—Section 68S (River Road), over the Delaware Canal TSF) with a prestressed concrete adjacent box beam bridge on the existing alignment. The width of the proposed bridge will be increased so that the clear roadway width over the canal is 32.5 feet. The total clear span of the proposed bridge is 51 feet over the Delaware Canal and a minimum 7.0 feet underclearance. In addition, the new abutment on the towpath will be moved 3 feet. Also, two access driveways to both the Stoney Run aqueduct and the Canal Towpath and minor approach roadway work will be completed as part of the bridge replacement.

This site is located in the floodplain of the confluence of the Delaware River and Jericho Creek (Lambertville PA-NJ USGS Quadrangle N: 11.6 inches; W: 3.9 inches).

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

E44-131: Genevieve McCardle, 12007 Ferguson Valley Road, Lewistown, PA 17044 in Granville Township, **Mifflin County**, ACOE Baltimore District.

To construct and maintain a 14.0-foot wide single span bridge having a clear span of 30.0 feet and an underclearance of 4.5 feet across Buck Run (TSF). The project is located off Route 22/322 at Burnham/Yeagertown exit, 2.5 miles south on SR 4013 (Ferguson Valley Road) towards Jack Mountain (Lewistown, PA Quadrangle N: 20.06 inches; W: 15.81 inches; Latitude: 40° 36' 37" 6"; Longitude: 77° 36' 50") in Granville Township, Mifflin County.

E38-151: Twin Grove Campground, Inc., 1445 Suedberg Road, Pine Grove, PA 17963, Union Township, **Lebanon County**, ACOE Baltimore District.

To construct and maintain: 1) a 7.5-foot wide pedestrian bridge with a span of 79.0 feet and an average minimum underclearance of 0.65 foot; 2) a 7.5-foot wide pedestrian bridge with a span of 112.0 feet and an average minimum underclearance of 0.85 foot; 3) a 7.5-foot wide pedestrian bridge with a span of 69.0 feet and an average minimum underclearance of 0.65 foot; 4) a 7.5-foot wide wooden pedestrian bridge with a span of 80.0 feet and an average minimum underclearance of 0.75 foot; 5) a 6.0-inch outfall pipe; 6) a 8.0-inch sanitary sewer line crossing; to maintain a) an existing 18.0-inch stream enclosure with a length of 460.0 feet; b) an existing 12.0 inch outfall pipe; c) four existing 18.0 inch outfall pipes; d) an existing 41.0-foot long, 36.0 inch pipe stream crossing; to rehabilitate, operate and maintain a deck of an existing bridge; to remove an existing 36.0 inch pipe and construct and maintain a 5.75-foot by 8.17-foot pipe arch for the purpose of facilitating the development of Twin Grove Campground. All activities are located in and along UNTs to Swatara Creek (CWF). The project is located along Route 443 North of Lickdale and west of the Schuylkill County line (Tower City, PA Quadrangle N: 3.1 inches; W: 1.7 inches; Latitude: 40° 30' 54"; Longitude: 76° 30' 47") in Union Township, Lebanon County.

E06-615, Lyons View Estates, the Development Group, LLC, 119 West Lancaster Avenue, Shillington, PA 19607, in Maxatawny Township, **Berks County**, ACOE Philadelphia District.

To relocate and maintain 1,630 feet of an ephemeral watercourse within a 30-foot long 15" SLCPP and a 1,600-foot long 30" SLCPP in the Sacony Creek (CWF) watershed for the purpose of constructing the proposed Huntly Drive and to construct and maintain a sanitary sewer and waterline crossing of the UNT. The impacts are associated with a subdivision known as Lyons View Estates located on the North side of Lyons Road approximately 2,000 feet South of Fleetwood Road (Fleetwood, PA Quadrangle; N: 18 inches, W: 0 inch; Latitude: 40° 28' 25", Longitude: 75° 45' 0") in Maxatawny Township, Berks County.

Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E02-1356 A1. The Municipal Authority of the Township of Robinson, P. O. Box 15539, Pittsburgh, PA 15539. To amend permit No. E02-1356 to place wetland fill in Robinson Township, **Allegheny County**, Pittsburgh ACOE District. (Pittsburgh West, PA Quadrangle N: 15.2 inches; W: 15.8 inches and Latitude: 40° 27' 28"—Longitude: 80° 06' 54"). The applicant proposes to amend Permit No. E02-1356 to include placing and maintaining fill in 0.077 acre of wetlands and along the left bank of Moon Run (WWF) for the purpose of upgrading the existing Moon Run STP facility. The project is located on the north side of Aiken Road, just north from the intersection of Aiken Road and Moon Run. The applicant proposes to mitigate 0.063 acre of wetlands to compensate for wetland impacts.

Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

E03-442, Redbank Valley Municipal Authority, 243 Broad Street, New Bethlehem, PA 16242. Sanitary Sewer Project, Grant Street pump station in floodplain of Redbank Creek, in South Bethlehem Borough, **Armstrong County**, ACOE Pittsburgh District (New Bethlehem, PA Quadrangle N: 41, 00', 06"; W: 79, 20', 16").

To construct and maintain a sanitary sewage pump station and associated grading and fill within the left 100-year floodplain and floodway of Redbank Creek approximately 1,500 feet downstream of the SR 839 bridge in South Bethlehem Borough, Armstrong County. This activity is part of the Redbank Valley Municipal Authority's sanitary sewer project involving sanitary sewer collection and treatment system in Porter and Redbank Townships and New Bethlehem and Hawthorn Boroughs, Clarion County and Mahoning and Redbank Townships and South Bethlehem Borough, Armstrong County. Separate GP-5 applications for stream crossings by sanitary sewer lines and a NPDES Stormwater Permit from Construction Activities application No. PAG2061606005 are also being reviewed as part of this project.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701, (570) 327-3636.

E14-487. Robert S. McGrail-Peasley, 2045 Runville Road, Bellefonte, PA 16823, Berm/bridge/culvert, in Boggs Township, **Centre County**, ACOE Baltimore District (Bellefonte, PA Quadrangle N: 21.07 inches; W: 13.35 inches).

To construct and maintain: 1) 340 foot long by 2 foot wide by 2 foot high earthen berm on the top of the right bank of a UNT to Wild Cat Run for the purpose of protecting an earthen road from flood waters; 2) a wooden pedestrian bridge with a 19-foot clear span and 4-foot underclearance across Wild Cat Run for private use; 3) a 24-inch diameter HDPE culvert with a rock headwall to make a new road crossing near the upstream limit of the earthen berm, located 3,100 feet upstream of the intersection of Gum Stump Road and Runville Road (SR 144) (Bellefonte, PA Quadrangle N: 21.07 inches; W: 13.35 inches) in Boggs Township, Centre County. This project proposes to impact 340 linear feet of the UNT to Wild Cat Run and 5 linear feet of Wild Cat Run that are tributaries to Wallace Run, which is classified as a HQ-CWF and proposes no wetland impacts.

ACTIONS

**THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT
FINAL ACTIONS TAKEN FOR NATIONAL POLLUTION DISCHARGE
ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY
MANAGEMENT (WQM) PERMITS**

The Department of Environmental Protection (Department) has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and Notices of Intent (NOI) for coverage under general permits. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal wastes; discharges to groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

Sections I—VI contain actions related to industrial, animal or sewage wastes discharges, discharges to groundwater and discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities and concentrated animal feeding operations (CAFOs). Section VII contains notices for parties who have submitted NOIs for coverage under general NPDES permits. The approval for coverage under general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in each general permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective permit. Permits and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

I. NPDES Renewal Permit Actions

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA 0032107 (Minor Sewage)	Department of Conservation and Natural Resources Bureau of State Parks (Beltzville State Park) P. O. Box 8551 Harrisburg, PA 17105-8551	Franklin Township Carbon County	Pohopoco Creek (02B)	Y

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0115304 Sewerage	Litchfield Township Supervisors R. R. 1, Box 144 J Sayre, PA 18840-9335	Litchfield Township Bradford County	Satterlee Creek 4B	Y

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0209406	Eutaw Centre SFTF, Inc. 150 Old Fort Road Spring Mills, PA 16875	Centre County Potter Township	UNT to Potter Run	Y

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N</i>
PA0111279 Industrial Waste	Hooversville Borough Municipal Authority Water Treatment Plant Main Street, Box 176 Hooversville, PA 15936	Somerset County Hooversville Borough	UNT to Stony Creek	Y
PA0215856 Industrial Waste	Blairsville Municipal Authority 203 East Market Street Blairsville, PA 15717	Westmoreland County Derry Township	Trout Run	Y
PA0218871 Industrial Waste	Ernest Borough Water Treatment Plant P. O. Box 119 Ernest, PA 15739	Indiana County Ernest Borough	McKee Run	Y
PA0044431 Sewage	Fairfield Manor, Inc. P. O. Box 17039 Pittsburgh, PA 15235	Westmoreland County Fairfield Township	UNT of Hendricks Creek	Y
PA0218774 Sewage	Beka House, Inc. 5977 Somerset Pike Boswell, PA 15531	Somerset County Jenner Township	Bens Creek	Y

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0028398	Fairview Sanitation Company Whitehall Village STP P. O. Box 927 Fairview, PA 16415-0827	Fairview Township Erie County	UNT to Trout Run 15-TR	Y

II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

NPDES Permit No. PA0026697, Sewage, **Butler Area Sewer Authority**, 100 Littman Road, Butler, PA 16001-3256. The permit was issued in conjunction with a Consent Order and Agreement (CO&A), signed by the authority and its tributary municipalities, on 10/13/06. The CO&A addresses an existing hydraulic overload situation. Changes made to the draft permit include: removing the proposed cadmium limit, inclusion of a whole effluent toxicity (WET) limit rather than just WET monitoring and miscellaneous wording changes.

III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

WQM Permit No. 3606402, CAFO, **Don Risser, Meadow Vista Farms**, 166 Risser Road, Bainbridge, PA 17502. This proposed facility is located in Conoy Township, **Lancaster County**.

Description of Proposed Action/Activity: This permit approves the construction of manure storage and sand settling facilities.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

WQM Permit No. 5706401, Sewage 4952, **Dushore Sewer Authority**, P. O. Box 248, Dushore, PA 18614-0248. This proposed facility is located in Dushore Borough, **Sullivan County**.

Description of Proposed Action/Activity: The applicant proposes to renovate their existing sewage plant with new influent pump station, influent screening and fine bubble aeration.

WQM Permit No. 4792402-T4, Sewerage 4952, **Helen P. Carbone**, 30 Blue School Road, Danville, PA 17821-9529. This facility is located in Valley Township, **Montour County**.

Description of Proposed Action/Activity: Transfer of permit, due to change in ownership, for a small flow sewage treatment system to serve the Carbone residence.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

WQM Permit No. 6306406, Sewerage, **Vestaburg New Hill Joint Authority**, P. O. Box 189, Vestaburg, PA 15368. This proposed facility is located in Vestaburg-East Bethlehem Township, **Washington County**.

Description of Proposed Action/Activity: Permit issuance for the construction and operation of a replacement sanitary sewer system.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

WQM Permit No. 6106402, Sewerage, **Quadland Corporation**, 7041 Truck World Boulevard, Hubbard, OH 44425. This proposed facility is located in Scrubgrass Township, **Venango County**.

Description of Proposed Action/Activity: This project is for the construction and operation of a new sewage treatment facility to replace an existing facility that serves the Emlenton Truck Plaza at Old Exit 5 on Interstate 80.

WQM Permit No. WQG028303, Sewerage, **Sugar Grove Area Sewage Authority**, R. D. 4, Box 205, Sugar Grove, PA 16350. This proposed facility is located in Sugar Grove Township, **Warren County**.

Description of Proposed Action/Activity: This project is for the construction and operation of a pump station and conveyance system to serve the Swede Hollow and Patchen Run areas.

WQM Permit No. WQG028304, Sewerage, **T. H. Bohica, LLC**, 523 South Washington Street, Easton MD 21601. This proposed facility is located in Sugar Grove Borough and Sugar Grove Township, **Warren County**.

Description of Proposed Action/Activity: This project is for the construction of sewer extensions to serve The Overlook at Sugar Grove.

IV. NPDES Stormwater Discharges from MS4 Permit Actions

V. NPDES Waiver Stormwater Discharges from MS4 Actions

VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024506011	Venezia Enterprises, Inc. 86 Airport Rd., P. O. Box 909 Royersford, PA 19468-0909	Monroe	Tobyhanna Township	Pocono Creek HQ-CWF McMichael Creek HQ-CWF

VII. Approvals to Use NPDES and/or Other General Permits

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated with Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater from Industrial Activities
PAG-4	General Permit for Discharges from Single Residence Sewage Treatment Plants
PAG-5	General Permit for Discharges from Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges from Combined Sewer Systems
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

*General Permit Type—PAG-2**Facility Location:
Municipality &
County**Permit No.**Applicant Name &
Address**Receiving
Water/Use**Contact Office &
Phone No.*

Moore Township Northampton County	PAG2004806012	Moore Estates, LLC Attn: Paul Desind 425 Allentown Drive Allentown, PA 18109	Hokendauqua Creek CWF	Northampton Co. Cons. Dist. (610) 746-1971
Butler Township Luzerne County	PAG2004003030(1)	Sand Springs Golf Development Corp. Phase 4 4511 Falmer Drive Bethlehem, PA 18020	Long Run to Nescopeck Creek CWF	Luzerne Co. Cons. Dist. (570) 674-7991
Butler Township Luzerne County	PAG2004003030(1)	Sand Springs Golf Development Corp. Phase 5B 4511 Falmer Drive Bethlehem, PA 18020	Long Run to Nescopeck Creek CWF	Luzerne Co. Cons. Dist. (570) 674-7991
Upper Allen Township Cumberland County	PAG2002106025	St. Elizabeth Seton Catholic Church Reverend James Lyons 310 Hertzler Road Mechanicsburg PA 17055	UNT Yellow Breeches Creek CWF	Cumberland County Conservation District 43 Brookwood Ave Carlisle PA 17013 (717) 240-7812
Lycoming County Williamsport	PAG2004106016	David R. Webb Co. P. O. Box 3455 Williamsport, PA 17701	UNT to West Branch Susquehanna River WWF	Lycoming County Conservation District 542 County Farm Road Suite 202 Montoursville, PA 17754, (570) 433-3003
Butler County Adams Township	PAR10E168-R	Treesdale Four Lakes, Brennan Builders 120 Brennan Lane Evans City, PA 16033	Breakneck Creek WWF	Butler Conservation District (724) 284-5270
Elk County City of St. Mary's	PAG2002406004	Bill Davis Rite Aid Corporation 545 Oak Hollow Road Aurora OH 44202-8038	Iron Run CWF	Elk County Conservation District (814) 776-5373
Erie County Millcreek Twp	PAG2002506026	Millcreek Community Hospital 5515 Peach Street Erie, PA 16509	Beaver Run WWF	Erie Conservation District (814) 825-6403
Erie County North East Township	PAG2002506039	Holiday Inn Express Jay Shah 22989 Lorain Rd. North Olmsted, OH 44070	Lower Reaches 16 Mile Creek WWF, MF	Erie Conservation District (814) 825-6403
Mercer County City of Farrell	PAG2004306020	WXZ Development 22720 Fairview Center Dr. Suite 150 Fairview Park, OH 44126	Shenango River WWF	Mercer Conservation District 724-662-2242

*General Permit Type—PAG-3**Facility Location:
Municipality &
County**Permit No.**Applicant Name &
Address**Receiving
Water/Use**Contact Office &
Phone No.*

Bedford County Bedford Township	PAR203507	L. B. Foster Company 415 Holiday Drive Pittsburgh, PA 15220-2729	Raystown Branch Juniata River TSF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Huntingdon County Dublin Township	PAR223519	Interforest Lumber Corp. P. O. Box 111 Shade Gap, PA 17255	UNT to Shade Creek TSF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707

*Facility Location:
Municipality &
County*

Permit No.

*Applicant Name &
Address*

*Receiving
Water/Use*

*Contact Office &
Phone No.*

Cumberland County
Camp Hill Borough

PAR123546

ADM Alliance Nutrition,
Inc.
200 Hummel Avenue
P. O. Box 398
Camp Hill, PA
17011-0398

UNT to Cedar Run
CWF

DEP—SCRO
909 Elmerton Avenue
Harrisburg, PA 17110
(717) 705-4707

York County
Manchester
Township

PAR233532

Graham Packaging
Company, LP
2401 Pleasant Valley
Road
York, PA 17402

Codorus Creek
WWF

DEP—SCRO
909 Elmerton Avenue
Harrisburg, PA 17110
(717) 705-4707

Berks County
Reading City

PAR213544

IFS Industries Inc.
400 Orrton Avenue
P. O. Box 1053
Reading, PA 19603

Schuylkill River
CWF

DEP—SCRO
909 Elmerton Avenue
Harrisburg, PA 17110
(717) 705-4707

Canton Borough
Bradford County

PAR124805
(Stormwater)

H. Rockwell & Son, Inc.
P. O. Box 197
Canton, PA 17724-0197

Mill Creek
CWF

Northcentral Regional
Office
Water Management
Program
208 West Third Street
Suite 101
Williamsport, PA 17701
(570) 327-3666

City of Williamsport
Lycoming County

PAR124802

Frito-Lay, Inc.
P. O. Box 3096
Williamsport, PA 17701

West Branch
Susquehanna River
WWF

Northcentral Regional
Office
Water Management
Program
208 West Third Street
Suite 101
Williamsport, PA 17701
(570) 327-3664

Union City
Borough,
Erie County

PAR238317

Molded Fiber
Glass/Union City
55 Fourth Avenue
P. O. Box 112
Union City, PA 16438

Municipal stormwater to
the South Branch of
French Creek

DEP—NWRO
Water Management
230 Chestnut Street
Meadville, PA 16335-3481
(814) 332-6942

General Permit Type—PAG-4

*Facility Location:
Municipality &
County*

Permit No.

*Applicant Name &
Address*

*Receiving
Water/Use*

*Contact Office &
Phone No.*

Valley Township
Montour County

PAG045027
Sewerage

Helen P. Carbone
30 Blue School Road
Danville, PA 17821-9529

UNT Mauses Creek
CWF

Water Management
Program
208 West Third Street
Williamsport, PA 17701
(570) 327-3666

Somerset County
Jenner Township

PAG046231

Brian P. Borosky
2914 Penn Avenue
Boswell, PA 15531

UNT to Pine Run

Southwest Regional
Office:
Water Management
Program Manager
400 Waterfront Drive
Pittsburgh, PA
15222-4745
(412) 442-4000

Greene Township
Erie County

PAG048374

Donald F. Jr. and Sherry
A. Trapp
9161 Kuhl Road
Erie, PA 16510

UNT to Four Mile Creek
16-FM

DEP—NWRO
Water Management
230 Chestnut Street
Meadville, PA 16335-3481
(814) 332-6942

*General Permit Type—PAG-8**Facility Location:
Municipality &
County**Permit No.**Applicant Name &
Address**Receiving
Water/Use**Contact Office &
Phone No.*Lower Ten Mile
Joint Sewer
Authority

PAG086115

Lower Ten Mile Joint
Sewer Authority
144 Chartiers Road
Jefferson, PA 15344Morgan Township
Greene CountySouthwest Regional Office
Water Management
Program Manager
400 Waterfront Drive
Pittsburgh PA 15222-4745
(412) 442-4000**PUBLIC WATER SUPPLY (PWS)
PERMITS**

The Department of Environmental Protection has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

SAFE DRINKING WATER**Actions taken under the Pennsylvania Safe Drinking Water Act**

Southeast Region: Water Supply Management Program Manager, 2 East Main Street, Norristown, PA 19401.

Permit No. 4606507, Minor Amendment. Public Water Supply.

Applicant	Aqua PA, Inc. 762 West Lancaster Avenue Bryn Mawr, PA 19010
Township	Lower Merion
County	Montgomery
Type of Facility	PWS

Consulting Engineer	Aqua PA, Inc. 762 West Lancaster Avenue Bryn Mawr, PA 19010
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Permit to Operate Issued	11/03/2006
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Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Permit No. 0206508, Public Water Supply.

Applicant	Municipal Authority of the Borough of West View 210 Perry Highway Pittsburgh, PA 15229
Borough or Township County	Stowe Township Allegheny
Type of Facility	Water treatment plant
Consulting Engineer	Bankson Engineers, Inc. 267 Blue Run Road P.O. Box 200 Indianola, PA 15051
Permit to Construct Issued	November 2, 2006

Permit No. 0206510MA, Minor Amendment. Public Water Supply.

Applicant	Richland Township Municipal Authority 2012 Kramer Road Gibsonia, PA 15044
Borough or Township County	Richland Township Allegheny
Type of Facility	Eden Hall (Ridge Road) water storage tank
Consulting Engineer	KLH Engineers, Inc. 5173 Campbells Run Road Pittsburgh, PA 15205
Permit to Construct Issued	November 2, 2006

Permit No. 3006501MA, Minor Amendment. Public Water Supply.

Applicant	Consol Pennsylvania Coal Company P.O. Box J 1525 Pleasant Grove Road Claysville, PA 15323
Borough or Township County	Richhill Township Greene
Type of Facility	Water treatment plant

Consulting Engineer N.A. Water Systems, Airside
Business Park, 250 Airside
Drive, Moon Township, PA 15108

Permit to Construct November 2, 2006
Issued

*Northwest Region: Water Supply Management Program
Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

Operations Permit issued to **Ridgway Township Municipal Authority**, PWS ID 6240022, Ridgway Township, **Elk County**. Permit No. 2499502, issued November 6, 2006, for the operation of fire booster and jockey pumps in the Boot Jack Industrial Park facility as permitted under the construction permit issued July 6, 1999.

Operations Permit issued to **Piney Creek Limited Partnership**, PWS ID 6160881, Piney Creek Township, **Clarion County**. Permit No. 1606501, issued November 8, 2006, for the operation of the 8.0 MG Raw Water Reservoir and addition of Soda Ash for potable water treatment, as permitted under the construction permit issued simultaneously on November 8, 2006.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 2

The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, shall also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a site-specific standard remediation. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media; benefits of reuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the Environmental Cleanup Program manager in the Department regional office after which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the Community Relations Coordinator at

the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Southeast Region: Environmental Cleanup Program
Manager, 2 East Main Street, Norristown, PA 19401.*

Thyssen Krupp Budd Co Die Storage Yard Site, City of Philadelphia, **Philadelphia County**. Justin Lauterbach, RT Env., Svc., Inc., 215 W. Church Rd., King of Prussia, PA 19406 on behalf of Joseph DePascale, Hunting Fox Assoc., I, LP., c/o PREI 1001 E. Hector St., Suite, 100, Conshohocken, PA 19428 has submitted a Cleanup Plan and Remedial Investigation concerning remediation of site soil and groundwater contaminated with PAHs, VOCs and PCBs. The report is intended to document remediation of the site to meet the Site-Specific Standards.

Goldman Paper/Wilde Dyehouse Site, City of Philadelphia, **Philadelphia County**. Robert Byer, Pen Env., & Remediation, Inc., 2755 Bergey Rd., Hatfield, PA 19440 on behalf of Angela Falcone, Jewish Federation of greater Philadelphia, 2100 Arch St., Philadelphia, PA 19103 has submitted a Final Report concerning remediation of site soil and groundwater contaminated with no. 2 fuel oil and chlorinated solvents. The report is intended to document remediation of the site to meet the Site-Specific Standards.

Bratton Residence, Abington Township, **Montgomery County**. Thomas Hippensteal, P. G., Env., Consultants, Inc., 500 Norristown Rd., P. O. Box 940, Spring House, PA 19477 on behalf of Thomas and Elizabeth Bratton has submitted a Low Risk Final Report concerning remediation of site soil contaminated with No. 2. Fuel oil. The report is intended to document remediation of the site to meet the Statewide Health Standards.

Sunoco Inc R & M Andover Rd. Site, West Brandywine Township, **Chester County**. Lisa Holderbach, Aquaterra Technologies, Inc., P. O. Box 744 West Chester, PA 19381 behalf of Thomas Finley, 47 Andover Rd., Glenmoore, PA 19343, Reginald and Barbara Owens, 1709 Norwood House Rd., Downingtown, AP 19335 has submitted a Final Report concerning remediation of site soil and groundwater contaminated with unleaded gasoline. The report is intended to document remediation of the site to meet the Statewide Health Standards and Site-Specific Standards.

*Northeast Regional Field Office, Ronald S. Brezinski,
Environmental Cleanup Program Manager, 2 Public
Square, Wilkes-Barre, PA 18711-0790.*

Lehigh Valley Industrial Park VII—Bethlehem Commerce Center—Lot 51 (Foult Warehousing Property), City of Bethlehem, **Northampton County**. Kenneth G. Robbins, Project Manager, HDR Engineering, Inc., 609 Hamilton Mall, Allentown, PA 18101 has submitted a Cleanup Plan (on behalf of his client Lehigh Valley Industrial Park, 1805 E. Fourth St., Bethlehem, PA) concerning the remediation of site soils found or suspected to have been impacted by VOCs, semi-VOCs and heavy metal compounds associated with historic manufacturing operations. The report was submitted in order to document attainment of the Site-Specific Standard using pathway elimination.

*Southcentral Region: Environmental Cleanup Program
Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

Domestic Casting Co./Shippensburg University Property, Shippensburg Township, **Cumberland County**. Gannett Fleming, P. O. Box 67100, Harrisburg, PA, 17106-7100, on behalf of Thomas James, Liberty Casting Company, LLC, 550 Liberty Road, P. O. Box 1368, Delaware, OH, 43015, submitted a revised Final Report concerning remediation of site soils contaminated with metals and PAHs from foundry sand. The report is intended to document remediation of the site to the Statewide Health Standard.

Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Hercules Incorporated Clairton Site, City of Clairton **Allegheny County**. Chad C. Coy, P. E., Cummings Riter Consultants, Inc., 10 Duff Road, Suite 500, Pittsburgh, PA 15235 (on behalf of Joseph A. Keller, P. E., Hercules Incorporated, Research Center Building 8139/15, 500 Hercules Road, Wilmington, DE 19808-1599) has submitted a Remedial Investigation Report concerning remediation of site soil and groundwater contaminated with inorganics. The report is intended to document remediation of the site to meet the Site-Specific Standard.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination,

describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program manager in the Department regional office before which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

Livingston and Company, Wrightstown Township, **Bucks County**. Steve F. Coe, Brown Env., Svc Corp., 301 S. State St., Suite, N102, Newtown, PA 18940 has submitted a Remedial Investigation Report concerning the remediation of site groundwater contaminated with chlorinated solvents. The Remedial Investigation Report demonstrated attainment of the Site-Specific Standards and was approved by the Department on October 23, 2006.

Northeast Regional Field Office, Ronald S. Brezinski, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

Ahmed Residence, East Stroudsburg Borough, **Monroe County**. Thomas S. Dalton, P. G., EMS Environmental, Inc., 4550 Bath Pike, Bethlehem, PA 18017 submitted a combined Remedial Investigation and Risk Assessment Report (on behalf of his client, Ahmed Ahmed, 104 Prospect Street, East Stroudsburg, PA 18301) concerning the remediation of soils and groundwater found or suspected to have been impacted by the release of No. 2 fuel oil and unleaded gasoline. The combined report was submitted in partial fulfillment of the Site-Specific Standard and was approved on November 3, 2006.

203 Jacktown Road Site (Former Kern Residence) (203 Jacktown Road), Upper Mt. Bethel Township, **Northampton County**. Gregory Walters, MEA, Inc., 1365 Ackermanville Road, Bangor, PA 18013 submitted a Final Report (on behalf of his client, Renee Kern, Nazareth, PA 18064) concerning the remediation of soils due to gasoline contamination related to a vehicular accident. The report demonstrated attainment of the residential Statewide Health Soil Standard and was approved on November 6, 2006.

Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Markovich Property, North Huntingdon Township **Westmoreland County**. Steven Gerritsen, SE Technologies, Inc., 98 Vanadium Road, Bridgeville, PA 15017 on behalf of Thomas Markovich, 64 Arona Road, North Huntingdon, PA 15642, and David Schwarzwaelder, Columbia Gas of Pennsylvania, a NiSource Company, 501 Technology Drive, Canonsburg, PA 15317 has submitted a Final Report concerning the remediation of site soil contaminated with volatile and semi-volatile organic constituents as well as PCBs. The Final Report demon-

strated attainment of the Statewide Health Standard and was approved by the Department on March 20, 2006.

SCM Metal Products, City of Johnstown **Cambria County**. Martin C. Knuth, Civil & Environmental Consultants, Inc., 333 Baldwin Road, Pittsburgh, PA 15205 on behalf of Sten-Ake Kvist, SCM Metal Products, 111 Hoganas Way, Hollsopple, PA 15935 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with chlorinated solvents. The Final Report demonstrated attainment of the Site-Specific Standard and was approved by the Department on October 23, 2006.

Costco Wholesale Store, West Homestead Borough **Allegheny County**. Christopher Carlson, P. G., ATC Associates Inc., 2200 Garden Drive, Suite 200 Seven Fields, PA 16046 on behalf of Heidi Macomber, Costco Wholesale Corp., 45940 Horseshoe Drive, Suite 150, Sterling, VA 20166 has submitted a Cleanup Plan concerning the remediation of site soil contaminated with concentrations of thallium above Statewide Health Standard. Pathway elimination proposed by capping with a building footprint and parking lot. The Cleanup Plan was approved by the Department on August 30, 2006.

National Torch Tips (Former), O'Hara Township, **Allegheny County**. Michelle E. Flowers, React Environmental Services, Inc., 690 Kingsessing Avenue, Philadelphia, PA 19142 on behalf of Peter Sukernek, Howard Hanna Company, Koppers Building, Pittsburgh, PA 15219, and Jonathan Kamin, 50 Freeport Partners, Freeport Road, Pittsburgh, PA 15215 has submitted a Remedial Investigation Report and a Cleanup Plan concerning the remediation of site soil and groundwater contaminated with chlorinated solvents, TCE, PCE, CIS-Dichloroethylene. The Remedial Investigation Report and Cleanup Plan were disapproved by the Department on August 22, 2006.

No. 1 Cochran Automotive, Borough of Monroeville **Allegheny County**. David J. Birchard, Environmental Remediation & Recovery, Inc., 5719 Route 6N, Edinboro, PA 16412 on behalf of Rob Cochran Automotive, 4200 William Penn Highway, Monroeville, PA 15146, and William Krahe, ECHO Real Estate, 701 Alpha Drive, Pittsburgh, PA 15328 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with benzene, naphthalene, MTBE and ethyl benzene. The Final Report demonstrated attainment of the Site-Specific Standard and was approved by the Department on August 18, 2006.

Beazer Adelaide Site/Former Koppers Wood Treating Facility, Dunbar Township **Fayette County**. James S. Zubrow, P. G., Key Environmental Inc., 1200 Arch Street, Suite 200, Carnegie, PA 15106 on behalf of Kurt Paschl, Beazer East, Inc., c/o Three Rivers Management, Inc., One Oxford Centre, Suite 3000, Pittsburgh, PA 15219 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with inorganics, other organics and PAHs. The Final Report demonstrated attainment of the Site-Specific Standard and was approved by the Department on October 23, 2006.

National Institute for Occupational Safety and Health (NIOSH), Pittsburgh Research Laboratory (Pittsburgh) Landfill Site or NIOSH-Pittsburgh Landfill Site, South Park Township **Allegheny County**. S. B. Lal, P. E., Diversified Consulting Engineers, 1624 Citation Drive, South Park, PA 15129-8831 on behalf of Barbara M. Heirendt, United States Department of

Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, Pittsburgh Research Laboratory, P. O. Box 18070, Cochran Mills Road, Pittsburgh, PA 15236-0070 has submitted a Remedial Investigation and Risk Assessment Report concerning the remediation of site soil and groundwater contaminated with inorganics, chlorinated solvents and PAHs. The Remedial Investigation and Risk Assessment Reports were approved by the Department on August 30, 2006.

Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Bradford Electronics, City of Bradford, **McKean County**. Environmental Strategies Consulting, LLC, 300 Corporate Center Drive, Suite 200, Moon Township, PA 15108, on behalf of Vishay Dale Electronics, 1122 23rd St., Columbus, NE 68601, submitted a Remedial Investigation Report and Final Report that demonstrated attainment of soil and deep aquifer to the Statewide Health Standard and shallow groundwater to the Site-Specific Standard. The site was contaminated with trichloroethene and vinyl chloride arsenic. The Remedial Investigation Report and Final Report were both approved by the Department on October 18, 2006.

Corry-Multi Tenant Facility, Wayne Township, **Erie County**. Urban Engineers of Erie Inc. 1319 Sassafras St. Erie, PA 16501-1720, on behalf of Corry Pennsylvania Redevelopment Authority, 1524 Enterprise Road, Corry PA 16407, has submitted a Remedial Investigation Report and Final Report concerning the remediation of soils and groundwater contaminated with Trichloroethylene. The Remedial Investigation Report and Final Report demonstrated attainment of the Site-Specific Standard for Soil and the Statewide Health Standard for groundwater. The Department approved both reports, on November 8, 2006.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Permits denied under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and regulations to operate solid waste processing or disposal area or site.

Northwest Region: Regional Solid Waste Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Permit Application No. 101678. Tri-County Landfill Inc., 159 TCI Park Drive, Grove City, PA 16127, Liberty and Pine Townships, **Mercer County**. The application was to repermit and expand the Tri-County Landfill. During the Environmental Assessment/Benefits and Harms review stage, the Department determined the benefits of the project did not clearly outweigh the harms. The permit was denied by the Northwest Regional Office on November 1, 2006.

AIR QUALITY

General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejksznier, New Source Review Chief, (570) 826-2531.

64-301-008GP14: Wilson Funeral Home (P. O. Box 7, Lake Ariel, PA 18436) on November 7, 2006, to construct and operate a human crematory and associated air cleaning device in Lake Township, **Wayne County**.

48-301-047GP14: Lehigh Valley Crematory Services, Inc. (301 Front Street, Hellertown, PA 18055) on November 6, 2006, to construct and operate a human crematory and associated air cleaning device in Hellertown Borough, **Northampton County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

GP3-36-03166: Brandenburg Industrial Service Co. (1805 East Fourth Street, Bethlehem, PA 18015) on November 7, 2006, for Portable Nonmetallic Mineral Processing Plants under GP3 in City of Lancaster, **Lancaster County**.

GP11-36-03166: Brandenburg Industrial Service Co. (1805 East Fourth Street, Bethlehem, PA 18015) on November 7, 2006, for Nonroad Engines under GP 11 in City of Lancaster, **Lancaster County**.

Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.

15-0104C: Tasty Baking Oxford, Inc. (700 Lincoln Ave., Oxford, PA 19363) on November 8, 2006, to operate two sveba-dahlen V42 rack ovens in Oxford Borough, **Chester County**.

15-0010C: ISG Plate, LLC (50 South First Ave., Coatesville, PA 19320) on November 8, 2006, to operate a fabric collector in City of Coatesville, **Chester County**.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejksner, New Source Review Chief, (570) 826-2531.

40-302-155: Wilkes-Barre General Hospital (575 North River Street, Wilkes Barre, PA 18702) on November 1, 2006, to modify three boilers to utilize No. 4 fuel oil in Wilkes Barre, **Luzerne County**.

40-399-038D: Fairchild Semiconductor (125 Crestwood Road, Mountaintop, PA 18707) on October 25, 2006, to install air cleaning devices on the FAB 8 production area in Wright Township, **Luzerne County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

28-05011A: Waste Management Disposal Services of PA, Inc. d/b/a Mountain View Reclamation (9446 Letzburg Road, Greencastle, PA 17225-9317) on November 7, 2006, for addition of a new enclosed ground flare to their existing Mountain View Reclamation facility in Antrim Township, **Franklin County**.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.

15-0115C: QVC, Inc. (1200 Wilson Drive, West Chester, PA 19380) on November 1, 2006, to operate an emergency generator (2,000) kW in West Goshen Township, **Chester County**.

46-313-146: Penn Color, Inc. (2755 Bergey Road, Hatfield, PA 19440) on November 3, 2006, to operate a base pigment dispersion facility in Hatfield Township, **Montgomery County**.

23-0074: GS Roofing Production Co., Inc. (800 W. Front Street, Chester, PA 19013) On November 7, 2006, to operate a thermal oxidizer in City of Chester, **Delaware County**.

23-0082: Liberty Electric Power, LLC (1000 Industrial Hwy, Route 291, Eddystone, PA 19022) on November 7, 2006, to operate a power plant-500 MW in Eddystone Borough, **Delaware County**.

09-0024C: Waste Management Disposal Services of PA Inc. (1121 Bordentown Road, Morrisville, PA 19067) on November 7, 2006, to operate a landfill in Tullytown Borough, **Bucks County**.

09-0087B: Air Products and Chemicals, Inc. (351 Philadelphia Avenue, Morrisville, PA 19067) on November 7, 2006, to operate a SiF4 process scrubber in Falls Township, **Bucks County**.

15-0004D: Alcoa Packaging, LLC (520 Lincoln Avenue, Downingtown, PA 19335) on November 7, 2006, to operate four film seaming machines in Downingtown Borough, **Chester County**.

46-0035B: SmithKline Beecham d/b/a Glaxo-SmithKline (709 Swedeland Road, King of Prussia, PA 19406) on November 8, 2006, to operate an emergency electric generator in Upper Merion Township, **Montgomery County**.

46-0072: Willow Grove Air Reserve Station (913 MSG/CEV 2164 McGuire Street, Willow Grove ARS, PA 19090) on November 7, 2006, to operate a spray paint booth in Horsham Township, **Montgomery County**.

09-0087D: Air Products and Chemicals, Inc. (351 Philadelphia Avenue, Morrisville, PA 19067) on November 1, 2006, to operate a chlorine distillation process in Falls Township, **Bucks County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

22-05035A: Eastern Industries, Inc. (P. O. Box 177, Winfield, PA 17889) on October 15, 2006, to replace the existing primary jaw crusher, the existing grizzly and blacktop screens and to refurbish the dust collector that controls the blacktop plant at their Elizabethtown quarry in Washington Township, **Dauphin County**. This plan approval was extended.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.

41-00028: Koppers Industries, Inc. (50 Koppers Lane, Montgomery, PA 17752) on November 7, 2006, by means of Department-initiated amendment, to delete erroneous capacity and throughput values in Clinton Township, **Lycoming County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; William Charlton, New Source Review Chief, (412) 442-4174.

56-00025F: New Enterprise Stone and Lime (P. O. Box 77, New Enterprise, PA 16664) on November 06, 2006, to complete installation of a new piece of equipment at the Bakersville Quarry in Jefferson Township in **Somerset County**. This plan approval was extended.

30-00099E: Allegheny Energy Supply Co., LLC (800 Cabin Hill Drive, Greensburg, PA 15601) on November 03, 2006, to allow completion of stack testing at the Hatfield Power Station in Monongahela Township, **Greene County**. This plan approval was extended.

Title V Operating Permits Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.

46-00046: Accellent, Inc. (200 West 7th Avenue, Trappe, PA 19426) on November 8, 2006, to renew the Title V Operating Permit in Trappe Borough, **Montgomery County**. The initial permit was issued on July 3, 2001. The facility is primarily used for the fabrication of metal tubing used in the medical, aerospace, and automotive industries. The facility cleans the metal parts in the three vapor degreasers that are located at the facility. The vapor degreasers are subject to the requirements of 40 CFR Part 63, Subpart T, and the facility is using control combinations to comply with these regulations. Other sources of volatile organic compounds include three boilers, several space heaters, plastic coating processes, and parts washers. As a result of potential emissions of volatile organic compounds, the facility is a major stationary source as defined in Title I, Part D of the Clean Air Act Amendments, and is therefore subject to the Title V permitting requirements adopted in 25 Pa. Code Chapter 127, Subchapter G. The proposed Title V Operating Permit Renewal does not adopt any new regulations and does not reflect any change in air emissions from the facility. The facility is not subject to Compliance Assurance Monitoring under 40 CFR Part 64. The renewal contains all applicable requirements including monitoring, recordkeeping and reporting.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

67-05004: P. H. Glatfelter Co. (228 South Main Street, Spring Grove, PA 17362-1000) on November 2, 2006, to operate a pulp and paper mill in Spring Grove Borough, **York County**. This is a renewal of the Title V operating permit.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.

09-00147: Northtec LLC (411 Sinclair Road, Bristol, PA 19007) On November 8, 2006, to operate a cosmetic powder processing plant in Bristol Township, **Bucks County**. The permit is for a non-Title V (State-only) facility. The facility does not have the potential to emit

major amounts of criteria pollutants; therefore the facility is categorized as a Natural Minor. Operating Permit also includes minor modification issued under 25 Pa. Code § 127.462. Modification to source level requirements, hours of operation limitation has been removed. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

21-03004: ADM Milling Co. (P. O. Box 3100, Shiremanstown, PA 17011) on November 7, 2006, to operate their flour milling facility in Camp Hill Borough, **Cumberland County**. This is a renewal of the State-only operating permit.

28-03008: Edge Rubber (811 Progress Road, Chambersburg, PA 17201-3257) on November 6, 2006, to operate their rubber recycling facility in Chambersburg Borough, **Franklin County**. This is a renewal of the state only operating permit.

36-03105: Binkley and Ober, Inc. (P. O. Box 7, 2742 Lancaster Road, East Petersburg, PA 17520-0007) on November 2, 2006, to operate their stone crushing plant in East Hempfield Township, **Lancaster County**. This is a renewal of the State-only operating permit.

36-03157A: Fertrell Co. (601 North 2nd Street, P. O. Box 265, Bainbridge, PA 17502-0265) on November 6, 2006, for their fertilizer plant in Conoy Township, **Lancaster County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Mark Wayner, Facilities Permitting Chief, (412) 442-4174.

04-00496: Jerart, Inc. (3701 Duss Avenue, P. O. Box 153, Baden, PA, 15005) on October 30, 2006, for a sand and stone processing plant to include an impact crusher, a screening plant, various conveyors and transfer points, material handling with front end loaders, storage piles and plant haul roads at their slag processing plant located in Baden Borough, **Beaver County**.

65-00829: Fulmer Co., LLC (3004 Venture Court, Export, PA 15632) on November 1, 2006, to operate a foundry at Perma-Cast Export Facility in Penn Township, **Westmoreland County**.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.

23-00030: Swarthmore College (500 College Ave., Swarthmore, PA 190814) on November 7, 2006, an administrative amendment to the renewed Title V Operating Permit at their campus in Swarthmore Borough, **Delaware County**. The air pollution sources at the campus include 18 boilers, 10 backup emergency generators and a liquid chilling unit. The boilers are used to provide heat and hot water for the academic and residential buildings. The permit is being amended to correct errors in the amended, renewed Title V Operating Permit. The amended Title V Operating Permit will contain additional monitoring, recordkeeping, reporting and work practice standards to keep the facility operating within all appli-

cable air quality requirements. The facility is not subject to Compliance Assurance Monitoring (CAM) under 40 CFR Part 64.

The following conditions have been addressed in the amended Title V Operating Permit, as outlined below:

i. Section G (Miscellaneous)—The fuel type for the 20-kW Wharton generator, that is exempted per 25 Pa. Code § 127.14(a)(8)(6), was changed from natural gas to diesel.

ii. Section G (Miscellaneous)—The fuel type for the 15-kW Worth generator, that is exempted per 25 Pa. Code § 127.14(a)(8)(6), was changed from dual fuel (diesel/natural gas) to natural gas only.

iii. Section(s) A and D, Source ID: 112 (Small Misc. Generator)—The Permit Map was changed to remove FML01 (Natural Gas Line) and FML02 (No. 6 Fuel Oil) and replaced with FML03 (No. 2 Fuel Oil).

iv. Section D, Source ID: 112 (Small Misc. Generator), Condition No. 004—The fuel restriction condition was revised to permit this source to only burn No. 2 fuel oil.

v. Section D, Source ID: 002 (Heat Plant No. 2), Condition No. 005—The testing requirement for this source was revised to require the source to fire only No. 6 fuel oil while conducting the performance test.

vi. Section D, Source ID: 003 (Heat Plant No. 3), Condition No. 004—The Title V Operating Permit was revised to include a new testing requirement for this source. This testing requirement requires the permittee to perform a source test, no earlier than 12 months prior to the expiration date of the permit to demonstrate compliance with the NO_x and SO_x emission limits. The testing also requires the source to be fired only No. 6 fuel oil while conducting the performance test.

09-00022: Cleveland Steel Container Corp. (350 Mill Street, Quakertown, PA 18951) On November 7, 2006, located in Quakertown Borough, **Bucks County**. The facility's major emission points include paint booths and lithographic printing presses, which emits major levels of VOCs. Administrative Amendment of Title V Operating Permit issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.450. The amendment incorporates terms and conditions from Plan Approval PA-09-0022B, which limits individual HAP emissions to less than 10 tons per year and combination HAP emissions to less than 25 tons per year. The Title V also increases the VOC content of inks applied to steel sheets at Lithographic Press No. 1 (Source ID 108) from 10% to 15% by weight. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility within all applicable air quality requirements.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.

36-05027: R. R. Donnelly and Sons Co. (216 Greenfield Road, Lancaster, PA 17601-5885) on November 6, 2006, to install a printing press (Goss S-3000) to replace an existing unit in City of Lancaster, **Lancaster County**. This Title V operating permit was administratively amended to incorporate Plan Approval 36-05027G. This is revision No. 2.

Operating Permits Denied, Terminated, Suspended or Revoked under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.431 and 127.461.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.

46-00227: Schmidt Structural Products, Inc. (38 Souderton Pike, Souderton, PA 18964) on November 9, 2006, for revocation of the facility's State-only (Synthetic Minor) Operating Permit for its two paint spray booths in Franconia Township, **Montgomery County**. Operations at the facility were shut down in October 2005. Since that time, the building has been sold and the paint spray booths have been moved out-of-State. The new owner is no longer eligible to apply for Emission Reduction Credits for the shutdown of the facility.

ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 Water Quality Certification and the NPDES permit application. Mining activity permits issued in response to the applications will also address the application permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

Coal Permits Actions

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.

33850123 and NPDES Permit No. PA0106801. Waroquier Coal Company (P. O. Box 128, Clearfield, PA 16830). Renewal of an existing bituminous strip operation in Washington Township, **Jefferson County** affecting 203.2 acres. Receiving streams: UNT to Mill Creek and UNT to Rattlesnake Run. Application received: August 11, 2006. Permit issued: November 7, 2006.

43060101 and NPDES Permit No. PA0258113. Ben Hal Mining Company (389 Irishtown Road, Grove City, PA 16127). Commencement, operation and restoration of a bituminous strip operation in Jackson Township, **Mercer County** affecting 68.9 acres. Receiving streams: UNT to Yellow Creek. Application received: February 1, 2006. Permit issued: November 7, 2006.

3350106 and NPDES Permit No. PA0258032. Mountain Coal Co., Inc. (11931 State Route 85, Kittanning, PA 16201). Commencement, operation and restoration of a bituminous strip and auger operation in Knox and Oliver Townships, **Jefferson County** affecting 75.3 acres. Receiving streams: UNT to Little Sandy Creek. Application received: October 17, 2005. Permit issued: November 7, 2006.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.

54970101T and NPDES Permit No. PA0223832. Premium Fine Coal, Inc., (P. O. Box 2043, Hazleton, PA 18201). Transfer of an existing anthracite surface mine operation in Schuylkill Township, **Schuylkill County** affecting 632.0 acres; receiving stream: Schuylkill River. Application received August 28, 2006. Transfer issued: November 8, 2006.

Government Financed Construction Contract

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.

Larson Enterprises, GFCC No. 17-06-06, Graham Township, Clearfield County (Alder Run—Upper West Branch Watershed): A Government-Financed Construction Contract (GFCC) has been awarded to Larson Enterprises that will result in the reclamation of over 1,750 feet of outslope as well as approximately 8.0 acres of abandoned mine lands in Graham Township, **Clearfield County**. The reclamation of the abandoned mine lands will also reduce the amount of sediment entering several unnamed tributaries to Alder Run and Mons Run from the site. Alkaline addition in the form of waste lime will be added to the mining area at a rate of 380 tons/acre. The value of this reclamation is estimated at \$46,400.

Noncoal Permits Actions

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.

8274SM1T and NPDES Permit No. PA0595705. ICM of Pennsylvania, Inc., (638 Lancaster Avenue, Malvern, PA 19355). Transfer of an existing quarry operation and NPDES Permit for discharge of treated mine drainage in Manheim and Upper Leacock Townships, **Lancaster County** affecting 71.75 acres, receiving stream: Conestoga River. Application received April 10, 2006. Transfer issued: November 6, 2006.

ACTIONS ON BLASTING ACTIVITY APPLICATIONS

Actions on applications under the Explosives Acts of 1937 and 1957 (73 P.S. §§ 151–161) and 25 Pa. Code § 211.124. Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.

28064175. Warrens Excaating & Drilling, Inc. (P. O. Box 189, Bowmansville, PA 17507-0189). Blasting activity permit issued for residential development in Chambersburg Borough, **Franklin County**. Blasting activity permit end date is November 1, 2007. Permit issued: November 3, 2006.

21064188. J. Roys, Inc. (P. O. Box 125, Bowmansville, PA 17507-0125). Blasting activity permit issued for residential development in Silver Spring Township, **Cumberland County**. Blasting activity permit end date is November 1, 2007. Permit issued: November 3, 2006.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.

55064101. D. C. Guelich Explosives Co. (R. R. 3, Box 125A, Clearfield, PA 16830). Construction blasting for building expansion located in Center Township, **Snyder**

County. Application received: October 24, 2006. Permit issued: November 2, 2006. Permit expires on: October 31, 2007.

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 621-3118.

39064120. Hayduk Enterprises, Inc. (257 Riverside Drive, Factoryville, PA 18419). Construction blasting for Iron Run Plaza in Upper Macungie Township, **Lehigh County** with an expiration date of June 30, 2007. Permit issued: November 3, 2006.

45064164. Explosive Services, Inc. (7 Pine Street, Bethany, PA 18431). Construction blasting for Winona Lakes in Middle Smithfield Township, **Monroe County** with an expiration date of November 30, 2007. Permit issued: November 3, 2006.

45064165. Explosive Services, Inc. (7 Pine Street, Bethany, PA 18431). Construction blasting for Wilderness Acres in Middle Smithfield Township, **Monroe County** with an expiration date of November 30, 2007. Permit issued: November 3, 2006.

45064166. Explosive Services, Inc. (7 Pine Street, Bethany, PA 18431). Construction blasting for Shawnee Oakdale in Middle Smithfield and Smithfield Townships, **Monroe County** with an expiration date of November 30, 2007. Permit issued: November 3, 2006.

45064167. Explosive Services, Inc. (7 Pine Street, Bethany, PA 18431). Construction blasting for Pocono Farms in Coolbaugh Township, **Monroe County** with an expiration date of November 30, 2007. Permit issued: November 3, 2006.

45064168. Explosive Services, Inc. (7 Pine Street, Bethany, PA 18431). Construction blasting for Franklin Hill Acres in Smithfield Township, **Monroe County** with an expiration date of November 30, 2007. Permit issued: November 3, 2006.

45064169. J. Roy's, Inc. (Box 125, Bowmansville, PA 17507). Construction blasting for Airport Road Waterline in Smithfield Township, **Monroe County** with an expiration date of November 1, 2007. Permit issued: November 3, 2006.

06064139. Warren's Excavating & Drilling, Inc. (P. O. Box 189, Bowmansville, PA 17507). Construction blasting for Reedy Estates in Spring Township, **Berks County** with an expiration date of November 3, 2007. Permit issued: November 7, 2006.

06064140. Keystone Blasting Service (381 Reifsnnyder Road, Lititz, PA 17543). Construction blasting for a single dwelling in Marion Township, **Berks County** with an expiration date of December 30, 2006. Permit issued: November 7, 2006.

39064121. Austin Powder Company (25800 Science Park Drive, Cleveland, OH 44122). Construction blasting for Iron Run Center in Upper Macungie Township, **Lehigh County** with an expiration date of November 3, 2007. Permit issued: November 7, 2006.

48064128. Austin Powder Company (25800 Science Park Drive, Cleveland, OH 44122). Construction blasting for United Plastics Plant in Forks Township, **Northampton County** with an expiration date November 3, 2007. Permit issued: November 7, 2006.

35064120. Austin Powder Company (25800 Science Park Drive, Cleveland, OH 44122). Construction blasting for Glen Maura Development in Moosic Borough, **Schuylkill County** with an expiration date of November 3, 2007. Permit issued: November 8, 2006.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation described will comply with the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State water quality standards.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P.S. § 679.302) and The Clean Streams Law (35 §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).

Permits, Environmental Assessments and 401 Water Quality Certifications Issued

WATER OBSTRUCTIONS AND ENCROACHMENTS

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

E28-334: Charles R. Smetzer, Jr., 758 Spruce Street, Hagerstown, MD 21740, in Washington Township, **Franklin County**, ACOE Baltimore District.

To replace an existing mobile home and to construct and maintain a single family residential house, with approximately 180 cubic yards of fill to be placed within the 100-year floodway of a UNT to West Branch Antietam Creek (CWF). The project is located near the intersection

of Marsh Road and Cold Spring Road (Waynesboro, PA Quadrangle N: 0.40 inches; W: 14.48 inches; Latitude: 39° 45' 08"; Longitude: 77° 36' 11") in Washington Township, Franklin County.

Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

E61-277, Byzantine, Inc., 1198 Mulberry Lane, Bridgewater, PA 1500. Tractor Supply Development, in Cranberry Township, **Venango County**, ACOE Pittsburgh District (Cranberry, PA Quadrangle N: 18.8 inches; W: 13.2 inches).

The applicant proposes to fill 0.03 acre of PEM wetland (de minimis) for the construction of a commercial retail facility and associated parking area approximately 0.4 mile W of the intersection of SR 322 and SR 257. The project proposes to directly impact 0.03 acre of PEM wetland.

SPECIAL NOTICES

Sewage Facilities Act Special Notice

Special Notice Under the Pennsylvania Sewage Facilities Act (35 P.S. §§ 750.1—750.20a)

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Project Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Washington Township	11800 Edinboro Road Edinboro, PA 16412	Erie

Project Description: On November 13, 2006, under 25 Pa. Code § 94.31 (relating to organic or hydraulic overload), the Department of Environmental Protection issued an Order to Washington Township and to the Washington Township Sewer Authority which imposes a ban on all connections to Washington's sewerage conveyance system that is tributary to the Angling Road Sewage Treatment Plant. No building permits which may result in a connection to the overloaded sewerage facilities or increase the load to those facilities through an existing connection shall be issued by Washington or by the Washington Township Sewer Authority.

Drinking Water State Revolving Fund Special Notice

Special notice under the Federal Safe Drinking Water Act

Northeast Region: Water Supply Management Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Project Location:

<i>Applicant</i>	<i>Applicant Address</i>	<i>County</i>
Easton Suburban Water Authority	3700 Hartley Avenue Easton, PA 18045	Northampton

Project Description: The Pennsylvania Infrastructure Investment Authority, which administers the Commonwealth's State Revolving Fund, is intended to be the funding source for this project. The Easton Suburban Water Authority proposes to increase permitted production capacity at the City of Easton's WTP to 16 mgd and upgrade all facilities necessary to reliably produce potable water. The project, known as the Easton WTP Phase Nos. 2—4 Improvement Project, is identified by Pennvest Project No. 480150300507-CW. The Department of Envi-

ronmental Protection's (Department) review of the project and the information received in the Environmental Report for the project has not identified any significant, adverse environmental impact resulting from this proposal. The Department hereby approves the Environmental Assessment.

Settlement of NPDES Permit Appeal Pursuant to 25 Pa. Code § 92.61(g)

Borough of Etna v. Department of Environmental Protection; EHB Docket No. 2006-102-R

This matter involved the appeal of the National Pollutant Discharge Elimination System Permit No. PAG 066119 (NPDES General Permit) issued by the Commonwealth of Pennsylvania, Department of Environmental Protection (Department) to the Borough of Etna (Etna) to operate a combined sewer system and to discharge, under certain conditions, a combination of sewage and stormwater runoff from nine combined sewer overflows (CSOs) into Pine Creek, Little Pine Creek and the Allegheny River.

The Department's final action to resolve this NPDES General Permit appeal was a settlement as reflected by an October 13, 2006, Consent Order and Agreement (Agreement) entered into by the Department and Etna. The major provisions of the settlement require Etna to apply to the Department for an individual NPDES Permit and the Department to issue a draft individual NPDES Permit with a tailored condition that recognizes that one of the nine CSOs within Etna, Outfall A-68, is operated by the Allegheny County Sanitary Authority (Alcosan). The individual NPDES Permit will recognize that Etna conveys combined sewage flows to Outfall A-68 and that Etna has responsibilities to implement nine minimum controls and to participate in area-wide CSO control activities. In addition, Etna agreed to withdraw its appeal before the Environmental Hearing Board.

Copies of the full Agreement are in the possession of Bruce M. Herschlag, Assistant Counsel, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4262 and David G. Ries, Esquire, Thorp, Reed & Armstrong, One Oxford Center, 301 Grant Street, 14th Floor, Pittsburgh, PA 15219-1425, (412) 394-7787 and may be reviewed by any interested person on request during normal business hours.

Persons believing to be aggrieved by this Agreement have a right to appeal the Environmental Hearing Board (Board), Second Floor, Market Street State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457. Appeals must be filed within 30 days of this publication.

If information concerning this notice is required in an alternative form, contact the Secretary to the Board at (717) 787-3483. TDD users may telephone the Board through the AT&T Pennsylvania Relay Service at (800) 654-5984.

[Pa.B. Doc. No. 06-2313. Filed for public inspection November 22, 2006, 9:00 a.m.]

Availability of Technical Guidance

Technical guidance documents are available on the Department of Environmental Protection's (Department) website at www.depweb.state.pa.us (DEP Keywords: "Technical Guidance"). The "Final Documents" heading is the link to a menu of the various Department bureaus where each bureau's final technical guidance documents are posted. The "Draft Technical Guidance" heading is the link to the Department's draft technical guidance documents.

The Department will continue to revise its nonregulatory documents, as necessary, throughout 2006.

Ordering Paper Copies of Department Technical Guidance

The Department encourages the use of the Internet to view and download technical guidance documents. When this option is not available, persons can order a paper copy of any of the Department's draft or final technical guidance documents by contacting the Department at (717) 783-8727.

In addition, bound copies of some of the Department's documents are available as Department publications. Check with the appropriate bureau for more information about the availability of a particular document as a publication.

Changes to Technical Guidance Documents

Following is the current list of recent changes. Persons who have questions or comments about a particular document should call the contact person whose name and phone number is listed with each document.

Final Technical Guidance:

DEP ID: 563-2504-001 Title: Conventional Bonding for Land Reclamation—Coal. Description: This guidance, issued under the authority of the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a) and the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66), describes the regulatory and statutory requirements for determining bond amounts. It also establishes bond rates and the process for determining the bond for land reclamation. Substantive revisions to the guidance relating to the Annual Review requirement were advertised for public comment at 36 Pa.B. 3166 (June 24, 2006). During the 30-day public comment period, comments were received from one commentator, which were addressed by the Department in a separate Comment and Response document that is available on the Department's website (see web address). Since the advertisement of the draft substantive revisions to the guidance on June 24, 2006, the Department modified the guidance further. These changes, which are reflected in the final document, concern instructions for "Backfilling" which appear in Appendix C, under "Grading." Concerning the measurement of pit length and width, the Department clarified that these parameters may be measured at the coals to be mined. This revision was made because there are circumstances where measuring at the coal is

not appropriate. Contact: William S. Allen, Jr., Department of Environmental Protection, Bureau of Mining and Reclamation, P. O. Box 8461, Rachel Carson State Office Building, 5th Floor, Harrisburg, PA 17105-8461, (717) 787-5103, wallen@state.pa.us. Effective Date: November 25, 2006.

Draft Technical Guidance

DEP ID: 392-0900-001 Title: Trading of Nutrient and Sediment Reduction Credits—Policy and Guidelines. Description: This guidance provides revisions to the Interim Final Trading of Nutrient and Sediment Reduction Credits—Policy and Guidelines (Interim Final Policy), published at 35 Pa.B. 5451 (October 2005). Public participation resulted in the following key revisions to the Interim Final Policy:

- Definitions have been made analogous to those in existing regulations and applicable program areas.
- The baseline for agriculture compliance and the standards thereof have been better defined.
- The application of trading ratios has been revised.
- A section on managing and tracking credits has been added.
- The use of credits for NPDES permits to meet effluent limits and sewage facilities planning requirements has been clarified.
- A section on water quality and Total Maximum Daily Loads has been added.
- Language on the conversion of farmlands for credits has been clarified.
- The approval procedure for credit-generating projects and trade proposals has been further refined.

The Department has engaged in extensive public participation and stakeholder workgroups generating significant input on implementation of the Chesapeake Bay tributary strategies and trading policy. Public participation included comments on the Interim Final Policy and input received at venues such as the Listening Sessions held in State College, Dauphin County and Lancaster County. Additionally, the Chesapeake Bay Tributary Strategy Steering Committee was expanded and reconvened in January 2006, to address the Tributary Strategy and potential revisions to the Department's nutrient and sediment trading program. Several workgroups were formed to address specific issues related to agriculture, stormwater, legacy sediment, trading, development and point sources. Proceedings from the workgroups can be found at www.dep.state.pa.us (DEP Keywords "Chesapeake Bay").

Appendix A provides nutrient trading criteria specific to the Chesapeake Bay Watershed. The attachments to Appendix A are implementation concepts derived from the proceedings from the point source and agriculture workgroups, which include the Point Source Allocation Strategy, Overview of Wastewater Planning Program Procedures, and the Overview of the Agriculture Sectors Participation in Nutrient Trading.

The Department seeks comment from the broader public on the draft revisions to the policy and on the implementation approaches contained in the attachments.

The Department notes that it is disinclined to adopt subsection b of the document entitled Overview of Point Source Allocation Strategy. This provision would allow a point source which has reduced nutrient levels to 8 mg/l Total Nitrogen (TN) and 1 mg/l Total Phosphorous (TP) to

make an annual cash payment to the Department in lieu of directly purchasing nutrient reduction credits for the remaining reductions needed to meet the lower 6 mg/l TN and .8mg/l TP limits recommended by the Point Source Work Group. The Department questions the need for it to act as an intermediary for the purchase of credits, now that the web-based nutrient trading marketplace is functional. The approach runs counter to the strong recommendations from the Steering Committee and other experts, in favor of allowing the free market to achieve the most cost effective reductions.

It is the Department's responsibility to assure compliance with Federal and State water quality standards and may implement measures different from, or beyond those set forth in this policy, as may be necessary or appropriate. Written Comments: Interested persons may submit written comments on this draft document by December 15, 2006. Please note that the Interim Final Policy was previously open for public comment. Comments and proceedings from the previous comment period have been reviewed and posted on the Department's website at www.dep.state.pa.us. (DEP Keywords: Chesapeake Bay.) As all previous comments remain under consideration by the Department please limit submissions to new comments not previously submitted. Notice of availability of this draft document for public comment was posted on the Department's website at www.depweb.state.pa.us (DEP Keywords: "Update") on November 15, 2006. Comments submitted by facsimile will not be accepted. The Department will accept comments submitted by e-mail. A return name and address must be included in each e-mail transmission. Written comments should be submitted to the Department of Environmental Protection, Water Planning Office, P. O. Box 2063, Harrisburg, PA 17105-2063, or e-mail Ann Smith, annsmith@state.pa.us Effective Date: Upon publication of notice as final in the *Pennsylvania Bulletin*. Contact: Questions regarding the draft guidance document should be directed to Ann Smith at (717) 772-4785 or at the e-mail address provided previously.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 06-2314. Filed for public inspection November 22, 2006, 9:00 a.m.]

Laboratory Accreditation Advisory Committee; Meeting Cancellation

The Laboratory Accreditation Advisory Committee (Committee) meeting scheduled for Tuesday, December 12, 2006, has been cancelled. Notice of the Committee's next scheduled meeting will appear in a future issue of the *Pennsylvania Bulletin*.

Questions concerning the cancellation of the December 12, 2006, meeting or the scheduling of future meetings of the Committee can be directed to Aaren Shaffer Alger at (717) 346-8212, aaalger@state.pa.us or Richard Sheibley at (717) 346-8215 or rsheibley@state.pa.us.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 06-2315. Filed for public inspection November 22, 2006, 9:00 a.m.]

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

Admissions of Nonveterans to State Veterans' Homes

The Department of Military and Veterans Affairs (Department) hereby issues this interpretation and guidance for managing admissions of applicants who are not recognized as veterans by the United States Department of Veterans Affairs (VA) to the Commonwealth's six State veterans' homes. Nonveteran applicants may include spouses and unmarried surviving spouses of eligible veterans in certain circumstances.

In establishing the priorities for admission to State veterans' homes and in implementing admission policies and procedures, the Bureau for Veterans' Affairs is mindful of various requirements for State veterans' homes, including a limit on the percentage of nonveteran residents of the homes. Under VA guidelines, no more than 25% of the beds at a State veterans' home may be occupied by nonveterans at any time. Federal funding that supports the construction and operation of State veterans' homes depends on compliance with this limit.

Because the population of any one of six veterans' homes is variable, a shift in the proportion of veterans to nonveterans in the population of a particular home can occur in a variety of circumstances in a relatively short time. Accordingly, in managing the priorities of admissions to State veterans' homes, the Department will defer action on the admission of any nonveteran to any home where the nonveteran population at the time of the possible admission equals or exceeds 12%.

The applicants will be maintained in their place on the waiting list and may be offered admission after the

nonveteran population stabilizes below 12% of the total capacity of the home.

JESSICA L. WRIGHT,
Major General, PAARNG
The Adjutant General

[Pa.B. Doc. No. 06-2316. Filed for public inspection November 22, 2006, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Sale of Land No Longer Required for Transportation

The Department of Transportation (Department) under 2003(e) of The Administrative Code of 1929 (71 P. S. § 513(e)(7)), intends to sell certain land owned by the Department. The parcel is irregular shape, located eastbound at 63.5 mile post adjacent to Interstate 0078, in Lower Saucon Township, Northampton County. The parcel is an uneconomic remnant approximately 13.6 acres. The sale of the property is in an as is condition. Interested public agencies are invited to express their interest in purchasing the parcel within 30 calendar days from this notice.

For further information, contact Bruce Kern, District Property Manager, Department of Transportation, 1713 Lehigh Street, Allentown, PA 18103, (610) 798-4271.

ALLEN D. BIEHLER, P. E.,
Secretary

[Pa.B. Doc. No. 06-2317. Filed for public inspection November 22, 2006, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Comments Issued

Section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)) provides that the Independent Regulatory Review Commission (Commission) may issue comments within 30 days of the close of the public comment period. The Commission comments are based upon the criteria contained in section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b).

The Commission has issued comments on the following proposed regulation. The agency must consider these comments in preparing the final-form regulation. The final-form regulation must be submitted within 2 years of the close of the public comment period or it will be deemed withdrawn.

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Close of the Public Comment Period</i>	<i>IRRC Comments Issued</i>
125-45	Pennsylvania Gaming Control Board General and Operating Provisions; Board Procedures 36 Pa.B. 5690 (September 9, 2006)	10/10/06	11/9/06

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Close of the Public Comment Period</i>	<i>IRRC Comments Issued</i>
125-46	Pennsylvania Gaming Control Board Recordkeeping and Fees 36 Pa.B. 5700 (September 9, 2006)	10/10/06	11/9/06
125-47	Pennsylvania Gaming Control Board Diversity 36 Pa.B. 5687 (September 9, 2006)	10/10/06	11/9/06

Pennsylvania Gaming Control Board Regulation #125-45 (IRRC #2561)

General and Operative Provisions; Board Procedures

November 9, 2006

We submit for your consideration the following comments on the proposed rulemaking published in the September 9, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Gaming Control Board (Board) to respond to all comments received from us or any other source.

1. Determining whether the regulation is in the public interest.

The Pennsylvania Horse Race Development Act (Act) (4 Pa.C.S.A. §§ 1101—1904) allowed the Board to promulgate temporary regulations until July 5, 2006. The temporary regulations were not subject to two statutes that guide agencies when promulgating regulations. Those statutes are the Commonwealth Documents Law (CDL) (45 P.S. §§ 1201—1208) and the Regulatory Review Act (RRA) (71 P.S. §§ 745.1—745.15). The Act requires all temporary regulations to be promulgated as permanent regulations by July 5, 2007. The conversion of temporary regulations to permanent regulations requires compliance with both the CDL and the RRA.

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed rulemaking and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under § 745.5(a) in the regulatory analysis form (RAF).

The Preamble to this rulemaking states that the Board proposes to replace four chapters of its temporary regulations with permanent regulations. The explanation of the regulations in the Preamble and the information contained on the RAF is not sufficient to allow this Commission to determine if the regulation is in the public interest. While we commend the Board for involving the regulated community in the development of the temporary regulations, we note that a complete explanation of the need for each chapter and section was not provided in that process. Furthermore, there is no detailed fiscal impact and cost benefit analysis in the RAF. Without this information, we cannot determine if this proposed regulation is in the public interest. In the Preamble and RAF

submitted with the final-form rulemaking, the Board should provide more detailed information required under § 745.5(a) of the RRA.

CHAPTER 401. PRELIMINARY PROVISIONS

2. Section 401.2. Construction.—Statutory authority; Implementation procedures.

Subsection (b) allows the Board to permit deviations from a requirement of Part VII of Title 58. Part VII pertains to all of the Board's regulations, both substantive and procedural. Under Subsection (c), 1 Pa. Code § 31.2 (relating to liberal construction) would be superseded by this section. 1 Pa. Code § 31.2 pertains only to rules of administrative practice and procedure. What is the Board's statutory authority for granting a waiver from a substantive requirement? Absent specific statutory authority, Subsection (b) should be deleted in its entirety and Subsection (c) should be amended to only reference Subsection (a).

If the Board has statutory authority to grant waivers of substantive requirements, the procedures for requesting and considering a waiver must be included in the final-form regulation. In addition, the final-form regulation must address who can request such a waiver and what criteria the Board will apply to determine if a waiver will be granted.

3. Section 401.3. Definitions.—Statutory authority; Implementation procedures; Clarity.

Gaming employee

Paragraph (i)(J) references personnel with SLOTS Link security administrator access and responsibilities. The term "SLOTS Link" is not clear. This term should be defined in the final-form regulation.

Under Paragraphs (ii) and (iii), certain employees of a manufacturer will be considered "gaming employees." The definition of "gaming employee" found in § 1103 of the Act (4 Pa.C.S.A. § 1103) references only slot machine and supplier licensees. What is the Board's statutory authority for including certain employees of licensed manufacturers in this definition?

Paragraph (iv) states that "other employees as determined by the Board" may be considered a "gaming employee." This provision lacks specificity and would make compliance with the regulation difficult for the regulated community. The final-form regulation should either delete this paragraph or list who the other employees are.

Key employee

This definition deviates from the statutory definition found in the Act in that paragraph (ii) of the regulatory definition includes manufacturer and supplier licensees. What is the Board's statutory authority for including these licensees in the definition of "key employee"?

In addition, the statutory definition (§ 1103 of the Act (4 Pa.C.S.A. § 1103)) of this term includes the position of “director of cage and or credit operations.” Under Paragraph (i), why was “credit operations” not included in the regulatory definition?

Licensed entity

This term is defined as: “A person, other than a natural person, licensed by the Board under this part.” The phrase “other than a natural person” is not included in the statutory definition. The statutory definition includes the phrase “other person” and the definition of “person” in the Statutory Construction Act (1 Pa.C.S.A. §§ 1901—1991) includes “natural person.” What is the Board’s statutory authority to exclude a “natural person” as a licensed entity?

Manufacturer’s serial number

This definition states that the manufacturer’s serial numbers will be affixed to the outside of the slot machine cabinet in a location approved by the Board. This is a substantive provision. Substantive provisions in definitions are not enforceable. We recommend that this provision be moved to a more appropriate section in the body of the regulation. The final-form regulation should also include the process the Board will use to approve locations of numbers affixed to slot machines.

Occupation permit

The statutory definition of this term is: “A permit authorizing an individual to be employed or work as a gaming employee at a licensed facility.” The regulatory definition excludes the phrase “at a licensed facility.” Will a gaming employee not working at licensed facility be required to obtain an occupation permit? If so, what is the Board’s statutory authority for imposing this requirement?

Vendor certification and vendor registration

The Board has explained that the difference between these terms is the amount of expected goods and services the vendor may annually provide to a facility. In order for the regulated community to know whether they should apply for registration or certification, we recommend that the final-form regulation include the monetary amounts that trigger the need to obtain vendor registration or vendor certification.

CHAPTER 403. BOARD OPERATIONS AND ORGANIZATION

4. Section 403.6. Temporary emergency orders.—Implementation procedures; Clarity.

Subsection (c)

This subsection lists specific circumstances when a temporary emergency order may be issued. Subsection (c)(1) states that a person “charged with or convicted of a felony, a criminal gaming offense, or crime of dishonesty or false statement or other disqualifying offense” may be subject to a temporary emergency order. The phrase “other disqualifying offense” lacks clarity. This phrase should be deleted or the offenses should be listed in the final-form regulation.

Subsection (g)

Subsection (g) references § 491.3 (relating to service by the Board). Section 491.3 is a temporary regulation. The temporary regulations will cease to exist as of July 5, 2007, unless they are promulgated as permanent regulations by that date. We recommend that the Board delete references to temporary regulations unless the pertinent

temporary regulations have been promulgated as permanent regulations prior to the Board’s submittal of this final-form regulation. Other sections of this rulemaking that contain references to temporary regulations are: §§ 403.5(k)(2); 403.5(q); 403.5(r)(3) and 405.6(a).

Subsection (j)

This subsection pertains to the procedure for an informal hearing before the Executive Director or designee. Under Subsection (j)(5), how much time does the Executive Director have to render a decision and how will the person be notified of the decision? We recommend that the final-form regulation include provisions that address both of these concerns. This would allow a person that is the subject of a temporary emergency order to have a clear understanding of how this process works.

Subsection (m)

Under Subsection (m)(1), the Board may adopt a resolution ratifying or modifying the temporary emergency order. The Board has explained that the appeal process is contained in Chapter 494. The fact that a person has appeal rights and the procedure for filing an appeal should be referenced in the final-form regulation.

CHAPTER 405. BUREAU OF INVESTIGATIONS AND ENFORCEMENT

5. Section 405.1. General duties and powers.—Statutory authority; Clarity.

Paragraph (2) allows the Bureau of Investigation and Enforcement (Bureau) to investigate “licensees, permittees, registrants, certified vendors and other persons for potential violations of the act.” Section 1517(a)(1) of the Act (4 Pa.C.S.A § 1517(a)(1)) allows the Board to investigate “all licensees, permittees and applicants.” We question the Board’s statutory authority to investigate a person not subject to some form of Board approval. This should be explained in the Preamble to the final-form regulation.

6. Section 405.2. Information.—Statutory authority; Clarity.

Subsection 405.2(c) states that other state and local law enforcement agencies “shall” provide information requested by the Bureau relating to an applicant. Section 1517(f) (4 Pa.C.S.A. § 1517(f)) of the Act states that these agencies “may” obtain or provide that information. To be consistent with the Act, the word “shall” should be changed to “may.”

7. Section 405.6. Enforcement action.—Clarity.

This section allows the Office of Enforcement Counsel to initiate an enforcement action against a person holding a license, permit certification or registration issued by the Board. The term “enforcement action” is not defined. This term should be explained in the final-form regulation.

CHAPTER 407. PUBLIC ACCESS TO BOARD FILES

8. Section 407.1. Case files.—Reasonableness; Implementation procedures.

This section establishes the procedures the Board will follow when a request for confidential information has been made. A commentator has requested that a provision be added to this chapter that would require the Board to notify the applicant or holder of a license, permit, certification or registration of the request prior to the release of that holder’s confidential information. We believe this is a reasonable request that would allow the holder to better

manage its business interests and recommend that the Board consider adding language that would allow for proper notification.

9. Miscellaneous clarity.

To be consistent with the rest of § 403.6, the phrase “or designee” should be added to § 403.6(h).

Pennsylvania Gaming Control Board Regulation #125-46 (IRRC #2562)

Recordkeeping and Fees

November 9, 2006

We submit for your consideration the following comments on the proposed rulemaking published in the September 9, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Gaming Control Board (Board) to respond to all comments received from us or any other source.

9. Determining whether the regulation is in the public interest.

The Pennsylvania Horse Race Development Act (Act) (4 Pa.C.S.A. §§ 1101—1904) allowed the Board to promulgate temporary regulations until July 5, 2006. The temporary regulations were not subject to two statutes that guide agencies when promulgating regulations. Those statutes are the Commonwealth Documents Law (CDL) (45 P.S. §§ 1201—1208) and the Regulatory Review Act (RRA) (71 P.S. §§ 745.1—745.15). The Act requires all temporary regulations to be promulgated as permanent regulations by July 5, 2007. The conversion of temporary regulations to permanent regulations requires compliance with both the CDL and the RRA.

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed rulemaking and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under § 745.5(a) in the regulatory analysis form (RAF).

The Preamble to this rulemaking states that the Board proposes to replace two chapters of its temporary regulations with permanent regulations. The explanation of the regulation in the Preamble and the information contained on the RAF is not sufficient to allow this Commission to determine if the regulation is in the public interest. While we commend the Board for involving the regulated community in the development of the temporary regulations, we note that a complete explanation of the need for each chapter and section was not provided in that process. Furthermore, there is no detailed fiscal impact and cost benefit analysis in the RAF. Without this information, we cannot determine if this proposed regulation is in the public interest. In the Preamble and RAF submitted with the final-form rulemaking, the Board should provide more detailed information required under § 745.5(a) of the RRA.

10. Section 471.1. Fees generally.—Implementation procedures; Fiscal impact.

Subsection (d) states that each application submitted to the Board must be accompanied by a fee to cover the cost of the initial investigation and processing of the applica-

tion. Subsection (e) states that an applicant may be subject to additional fees, which are based on the actual expenses incurred by the Board in conducting the background investigations. The procedures for determining the additional fee amount and for requesting the additional fee are not included in the regulation. We recommend that these procedures be included in the final-form rulemaking.

11. Section 471.2. Schedules of fees and Section 471.3. Adjustment of fees.—Implementation procedures.

Section 1208(1) of the Act (4 Pa.C.S.A. § 1208(1)) provides the Board the power to levy and collect fees. These fees are in addition to the fees set by §§ 1208, 1209 and 1305 of the Act (4 Pa.C.S.A. §§ 1208, 1209 and 1305). Section 1208(2) of the Act (4 Pa.C.S.A. § 1208(2)) states the following:

Two years following enactment of this part, the board shall have the authority to increase each year any fee, charge, cost or administrative penalty, but not any criminal fine or penalty, *provided in this part* by an amount not to exceed an annual cost-of-living adjustment calculated by applying the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for the Pennsylvania, New Jersey, Delaware and Maryland area for the most recent 12-month period for which figures have been officially reported by the United States Department of Labor, Bureau of Labor Statistics, immediately prior to the date the adjustment is due to take effect. (Emphasis added.)

Under § 471.2, the Board proposes to establish fees and publish those fees in the *Pennsylvania Bulletin* and on its website. Those fees are not set by regulation. Section 471.3 allows the Board to adjust fees, charges, costs or administrative penalties specified in the Act by an amount not to exceed an annual cost-of-living calculation provided in the Act.

We have three suggestions. First, we question how the Board will increase the fees under § 471.2. All fees, whether established by the Act or set by the Board, can only be increased by the mechanism found in § 1208(2) of the Act. To avoid any confusion on how the fees in § 471.2 will be increased, we recommend that § 471.3 be amended to state that all fee increases will be calculated using the mechanism contained in § 1208(2) of the Act. Second, the final-form regulations should indicate when the fee schedule will be published in the *Pennsylvania Bulletin*. Third, the Board's website should be included in the final-form regulation.

Pennsylvania Gaming Control Board Regulation #125-47 (IRRC #2563)

Diversity

November 9, 2006

We submit for your consideration the following comments on the proposed rulemaking published in the September 9, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Pennsylvania Gaming Control Board (Board) to respond to all comments received from us or any other source.

12. Determining whether the regulation is in the public interest.

The Pennsylvania Horse Race Development Act (Act) (4 Pa.C.S.A. §§ 1101—1904) allowed the Board to promulgate temporary regulations until July 5, 2006. The temporary regulations were not subject to two statutes that guide agencies when promulgating regulations. Those statutes are the Commonwealth Documents Law (CDL) (45 P.S. §§ 1201—1208) and the Regulatory Review Act (RRA) (71 P.S. §§ 745.1—745.15). The Act requires all temporary regulations to be promulgated as permanent regulations by July 5, 2007. The conversion of temporary regulations to permanent regulations requires compliance with both the CDL and the RRA.

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed rulemaking and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under § 745.5(a) in the regulatory analysis form (RAF).

The Preamble to this rulemaking states that the Board proposes to replace two chapters of its temporary regulations with permanent regulations. The explanation of the regulation in the Preamble and the information contained on the RAF is not sufficient to allow this Commission to determine if the regulation is in the public interest. While we commend the Board for involving the regulated community in the development of the temporary regulations, we note that a complete explanation of the need for each chapter and section was not provided in that process. Furthermore, there is no detailed fiscal impact and cost benefit analysis in the RAF. Without this information, we cannot determine if this proposed regulation is in the public interest. In the Preamble and RAF submitted with the final-form rulemaking, the Board should provide more detailed information required under § 745.5(a) of the RRA.

13. Section 481.1. Statement of purpose, policy and applicability.—Statutory authority.

Subsection (b) states that it is the policy of the Board to promote and ensure that regulated entities conduct all aspects of their operations in a manner that assures diversity of opportunity. This would include the provisions of goods and services utilized by regulated entities. Under Section 1212(a) of the Act (4 Pa.C.S.A. § 1212(a)), only slot machine licensees are required to meet the “provisions of goods and services” requirement. What is the Board’s statutory authority for requiring all regulated entities to assure diversity of opportunity “through the provisions of goods and services”?

14. Section 481.3. Diversity participation.—Clarity.

This section states that a regulated entity may use the list of minority and women’s business enterprises certified by the Department of General Services to establish the eligibility of an enterprise for the purpose of promoting and ensuring minority and women’s business participation. The inclusion of the word “may” in this provision implies that other methods for establishing the eligibility of a business would be acceptable. If other methods are available, they should be listed in the regulation. If other methods are not available, the word “may” should be changed to “shall.”

15. Section 481.4. Establishment of diversity plan.—Statutory authority; Possible conflict with or duplication of statutes or regulations; Implementation procedures; Reasonableness; Clarity.

Subsection (a)

This subsection states the following:

Each regulated entity shall include in its application for licensure or certification a diversity plan that establishes a separate goal of diversity in the ownership, participation and operation of, and employment at the regulated entity. The Board will determine whether the stated goals set forth in each diversity plan are reasonable and represent a good faith effort to assure that all persons are accorded equality of opportunity in contracting and employment by the regulated entity and its contractors, subcontractors, assignees, lessees and agents.

We have two concerns. First, we question why the Board is deviating from the language of the Act and the temporary regulations that allow an applicant to agree to develop a diversity plan. Section 1325(b)(1) of the Act (4 Pa.C.S.A. § 1325(b)(1)) states that a license or permit shall not be granted or renewed unless the Board finds that the applicant has developed and implemented or agreed to develop and implement a diversity plan. Section 423.3(a)(1)(i) of the Board’s temporary regulations contains similar language to Section 1325 (b)(1) of the Act.

Second, what criteria will the Board use to determine if the diversity plan is reasonable? The criteria should be included in the final-form regulation.

Subsection (b)

This subsection states that a regulated entity may demonstrate achievement of its “diversity goals” through one of two methods. One method is contracting or transacting directly with minority and women’s business enterprises. The other is contracting with a nonminority business enterprise under terms and conditions that establish a participation plan. We have three concerns. First, the term “diversity goal” should be defined in the final-form regulation.

Second, this section does not establish criteria that would allow the regulated entity to determine if they are satisfying the Board’s requirement of contracting or transacting enough business with the appropriate enterprises. In order for the regulated entity to know what the Board expects, the final-form regulation should include provisions that specify how the Board will determine if the entity has achieved its diversity goals.

Third, Subsection (b)(1) uses the phrase “contracting or transacting.” Subsection (b)(2) only uses the term “contracting.” For consistency, we recommend that one phrase or term be used.

16. Section 481.6. Diversity audits.—Implementation procedures; Clarity.

This section allows the Board to perform audits to ensure compliance with this chapter. We recommend that the final-form regulation include procedures that will be used to notify the regulated entity of the audit.

ALVIN C. BUSH,
Chairperson

[Pa.B. Doc. No. 06-2318. Filed for public inspection November 22, 2006, 9:00 a.m.]

Notice of Filing of Final Rulemaking

The Independent Regulatory Review Commission (Commission) received the following regulation. It is scheduled to be considered on the date noted. The Commission's public meetings are held at 333 Market St., 14th Floor, Harrisburg at 10:30 a.m. To obtain a copy of a regulation, interested parties should first contact the promulgating agency. If a copy cannot be obtained from the promulgating agency, the Commission will provide a copy.

This schedule is tentative. Contact the Commission at (717) 783-5417 or check its website at www.irrc.state.pa.us for updates.

Final-Form

Reg. No.
Meeting

Agency/Title

Received

Public

14-505

Department of Public Welfare
Child Care

11/8/06

11/30/06

ALVIN C. BUSH,
Chairperson

[Pa.B. Doc. No. 06-2319. Filed for public inspection November 22, 2006, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Merger

A-210013F0017. United Water Pennsylvania, Inc. Application of United Water Pennsylvania, Inc. for all approvals and waivers, if any, which may be required under the Public Utility Code for the merger between Gaz de France and Suez, the Ultimate Corporate Parent of United Water Pennsylvania, Inc.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before December 5, 2006. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: United Water Pennsylvania, Inc.

Through and By Counsel: John J. Gallagher, Esquire, Edward G. Lanza, Esquire, Saul Ewing, LLP, 2 North Second Street, 7th Floor, Harrisburg, PA 17101

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-2320. Filed for public inspection November 22, 2006, 9:00 a.m.]

Natural Gas Service

A-140005. Ardent Resources, Inc. Application of Ardent Resources, Inc. for approval of Ardent Resources, Inc. to construct a pipeline from the gathering lines of the natural gas wells it operates in Clearfield County to a tie-in point with Columbia Gas Transmission Line 1711, also located in Clearfield County, PA. Ardent Resources, Inc.'s new pipeline is considered an intrastate pipeline from the furthestmost downstream point (the new Ardent

Resources, Inc. compressor) to the Columbia Gas Transmission tie-in point, a distance of approximately 1,500 feet. There will be no natural gas sales to either industrial or residential customers in this Commonwealth.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before December 11, 2006. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: Ardent Resources, Inc.

Through and By Counsel: Murray J. Hartzberg, Esquire, 1756 Taper Drive, Pittsburgh, PA 15241

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-2321. Filed for public inspection November 22, 2006, 9:00 a.m.]

Natural Gas Service

A-121100F2002. Equitable Gas Company. Application of Equitable Gas Company for approval of the abandonment of natural gas service to 11 field gathering line customers located in Waynesburg, Greene County, PA, due to mining operations.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before December 11, 2006. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: Equitable Gas Company

Through and By Counsel: Charles E. Thomas, Jr.,
Thomas, Thomas, Armstrong and Niesen, 212 Locust
Street, Suite 500, P. O. Box 9500, Harrisburg, PA 17108-
9500

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-2322. Filed for public inspection November 22, 2006, 9:00 a.m.]

STATE BOARD OF COSMETOLOGY

Bureau of Professional and Occupational Affairs v. Ann Chan and Hong TK Pham t/d/b/a Victoria Nails; Doc. No. 1794-45-2006

On October 30, 2006, Ann Chan and Hong TK Pham t/d/b/a Victoria Nails, of Philadelphia, Philadelphia County, license number CZ-115246-L, were suspended for failure to pay the \$500 civil penalty imposed by the State Board of Cosmetology (Board).

Individuals may obtain a copy of the adjudication by writing to C. William Fritz, II, Board Counsel, State Board of Cosmetology, P. O. Box 2649, Harrisburg, PA 17105-2649.

This adjudication and order represents the final Board decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a petition for review with that court in accordance with the Pennsylvania Rules of Appellate Procedure. Individuals who take an appeal to the Commonwealth Court must serve the Board with a copy of the petition for review.

The Board contact for receiving service of appeals is the previously named Board counsel.

SUSAN E. RINEER,
Chairperson

[Pa.B. Doc. No. 06-2323. Filed for public inspection November 22, 2006, 9:00 a.m.]

Bureau of Professional and Occupational Affairs v. Erin G. Foley; Doc. No. 0194-45-2006

On October 16, 2006, Erin G. Foley, of Philadelphia, Philadelphia County, license number CO-233447-L, a civil penalty of \$250 was imposed by the State Board of Cosmetology (Board) for practicing cosmetology on a lapsed license as well as an additional \$250, for a total of \$500.

Individuals may obtain a copy of the adjudication by writing to C. William Fritz, II, Board Counsel, State Board of Cosmetology, P. O. Box 2649, Harrisburg, PA 17105-2649.

This adjudication and order represents the final Board decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a petition for review with that court in accordance with the Pennsylvania Rules of Appellate Procedure. Individuals who take an appeal to the Commonwealth Court must serve the Board with a copy of the petition for review. The Board contact for receiving service of appeals is the previously named Board counsel.

SUSAN E. RINEER,
Chairperson

[Pa.B. Doc. No. 06-2324. Filed for public inspection November 22, 2006, 9:00 a.m.]

STATE CONTRACTS INFORMATION

DEPARTMENT OF GENERAL SERVICES

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". The penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter.

Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) is a qualified small business concern as defined in 4 Pa. Code 2.32."

A business is eligible for payments when the required payment is the latest of:

The payment date specified in the contract.

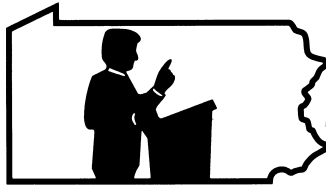
30 days after the later of the receipt of a proper invoice or receipt of goods or services.

The net payment date stated on the business' invoice.

A 15-day grace period after the required payment date is provided to the Commonwealth by the Act.

For more information: contact: Small Business Resource Center
PA Department of Community and Economic Development
374 Forum Building
Harrisburg, PA 17120
800-280-3801 or (717) 783-5700

Reader's Guide



Legal Services & Consultation

① Service Code Identification Number

② Commodity/Supply or Contract Identification No.

B-54137. Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department: General Services

Location: Harrisburg, Pa.

Duration: 12/1/93-12/30/93

Contact: Procurement Division
787-0000

③ Contract Information

④ Department

⑤ Location

⑥ Duration

⑦

(For Commodities: Contact:)
Vendor Services Section
717-787-2199 or 717-787-4705

REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.

(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

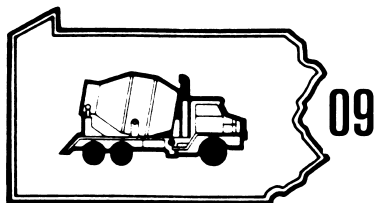
DO BUSINESS WITH STATE AGENCIES

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. The bureau is, by law, the central repository for all state contracts over \$5,000. Contract Specialists can supply you with descriptions of contracts, names of previous bidders, pricing breakdowns and other information. They can also direct you to the appropriate person and agency looking for your product or service. Copies of state contracts are also available. (Duplicating and mailing costs may apply). For more information, visit us online at www.patreasury.org.

Contact: **Bureau of Contracts and Public Records**
 Pennsylvania Treasury Department
 201 Finance Building
 Harrisburg, PA 17120
 Phone: (717) 787-2990 or 1-800-252-4700
 Fax: (717) 772-0977

ROBERT P. CASEY, Jr.,
State Treasurer

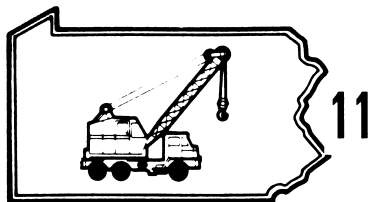
SERVICES



Construction & Construction Maintenance

SU-2005/7.1. Invitation to Bid-Shippensburg University Old Main Cupola and Porch Renovations. Shippensburg University of the PA State System of Higher Education invites General Contractors to request bid documents for this project. Work includes demolition and replacement of existing 2 story wood porches, wood cupola, asst word trim replacement, repair roof and incidental construction. Bidders may obtain project plans for a non-refundable fee of \$40.00, by contacting Hayes Large Architects, LLP, ATTN: Jill L. Brandon, 75 South Houcks Road, Suite 300, Harrisburg, PA 17109. Telephone (717) 238-4795. Pre-Bid Meeting with site visit immediately to follow will be held on November 29, 2006, at 10:00 AM in the Reed Operation Center Conference Room. Bids due: December 19, 2006 at 4:00 P.M. Old Main Room 300. Public Bid Opening: December 20, 2006 at 2:00 P.M., Old Main Room 203A. The system encourages responses from small firms, minority firms, and firms which may have not previously performed work for the System. Non-Discrimination and Equal Opportunity are the policies of the Commonwealth and of the PA State System of Higher Education.

Department: State System of Higher Education
Location: Shippensburg University, Shippensburg, PA
Duration: Work on site between May 13, 2007 and September 28, 2007
Contact: Deborah K. Martin, 717-477-1121



Demolition—Structural Only

0018-B13. The Pennsylvania Department of Transportation will be accepting sealed bids for the sale and removal of both commercial and residential dwellings located adjacent to State Route 0018(along College Avenue and Fourth Avenue) in the City of Beaver Falls, Beaver County. Contractors will be required to demolish or remove all structure(s), outbuildings, and site improvements. The contractor will also be required to comply with all Local, State, and FHWA regulations. For bid information, specifications, and further information, please contact Mr. Michael Sudar, District Property Manager at (412) 429-4830.

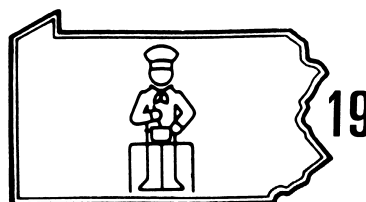
Department: Transportation
Location: City of Beaver Falls
Duration: 30 days from Notice to Proceed
Contact: Michael Sudar, (412) 429-4830



Financial and Insurance Consulting

RFP No. 2006-1. The PUC is inviting proposals to serve as the third-party administrator of the PA Universal Service Fund for the period of Jan. 1, 2007 through Dec. 31, 2010 with a possible one-year extension through Dec. 31, 2011, in accordance with our RFP No. 2006-1.

Department: Public Utility Commission
Location: Keystone Building, 3rdFloor North, 400 North Street, Harrisburg, PA 17120
Duration: This is a 3 year contract with a possible one-year extension to December 31, 2011.
Contact: Frank Wilmarth, (717) 772-8841



Food

CN00023648. Vendor to provide cheese and margarine on scheduled deliveries from December 2006 through March 2007. Bid opening date and time is November 29, 2006 at 11 am.

Department: Corrections
Location: State Correctional Institution at Albion, 10745 Route 18, Albion, PA 16475
Duration: Scheduled deliveries for 4 months.
Contact: Lesley S. Hill, 814-756-5778

CN00023664. The State Correctional Institution at Somerset will be soliciting bids for Produce for delivery the month of December 2006. Interested vendors must be registered with the Commonwealth of PA to receive bids and purchase orders and should contact the institution directly for a bid package. Bid opening date is 11/21/06 @ 1PM.

Department: Corrections
Location: State Correctional Institution at Somerset, 590 Walters Mill Road Somerset, PA 15510-0001
Duration: 11/8/06 through 12/31/06
Contact: Theresa Solarczyk, Purchasing Agent II, 814 445-6501 x1232

CN00023675. Pork and Pork products frozen Refer to DPW special instructions and conditions. Bid open date is 11/30/06. Prospective vendors must register with the Integrated Enterprise System (IES) at <http://www.vendorregistration.state.pa.us/>. DPW utilizes the information contained in the vendor master file for its procurement activities. Registered vendors who need to update or change the existing information in this file must contact IES and provide the changes or updates to IES. It is the vendor's responsibility to contact IES for changes, as DPW is unable to change vendor information. If you fail to update or change information, you may not receive requested bid information. Additional information please contact the purchasing office via email or phone.

Department: Public Welfare
Location: Wernersville State Hospital, P. O. Box 300 Route 422 & Sportsman Road, Wernersville, PA 19565
Duration: January—June 2007
Contact: Elsie Millington, 610-927-4700

Collective Number 00023698. Frozen Decaffeinated Coffee Concentrate (to include Dispensing Equipment). Prospective vendors must register with the Integrated Enterprise System (IES) at <http://www.vendorregistration.state.pa.us/>. DPW utilizes the information contained in the vendor master file for its procurement activities. Registered vendors who need to update or change the existing information in this file must contact IES and provide the changes or updates to IES. It is the vendor's responsibility to contact IES for changes, as DPW is unable to change vendor information. If you fail to update or change information, you may not receive requested bid information.

Department: Public Welfare
Location: Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401
Duration: Deliveries are for the time period of January through December 2007. Bid opening date and time is 12/4/06 @ 2 p.m.
Contact: Debbie Jones, 610-313-1025

CN00023652. Vendor to provide frozen vegetables and breakfast food(s) for scheduled deliveries from Dec. 2006 through Mar. 2007. Bid opening date and time is November 28 at 10am.

Department: Corrections
Location: State Correctional Institution at Albion, 10745 Route 18, Albion, PA 16475
Duration: 4 monthly deliveries
Contact: Lesley S. Hill, 814-756-5778

CN00023655. Oil, margarine, 1lb prints 30/lb cs, Oil, vegetable spread, 900 cup/cs, Frozen juice bars, 72 ind/cs

Department: Corrections
Location: State Correctional Institution at Fayette, 50 Overlook Drive, LaBelle, PA 15450
Duration: 12/30/2006
Contact: Judy Cook, 724-364-2200

CN000236651. The State Correctional Institution at Somerset will be soliciting bids for Frozen Vegetables. Interested vendors must be registered with the Commonwealth of PA to receive bids and purchase orders and should contact the institution directly for a bid package. Bid opening date is 11/28/06 @ 1 PM.

Department: Corrections
Location: State Correctional Institution at Somerset, 1590 Walters Mill Road, Somerset, PA 15510-0001
Duration: 11/7/06 through 2/1/07
Contact: Theresa Solarczyk, Purchasing Agent II, 814 445-6501 x1232

CN 00023672. Vendor will provide fresh fruit and vegetables to the State Correctional Institution At Mahanoy, 301 Morea Road, Schuylkill County, Mahanoy Township, Frackville, PA for the month of December 2006. Bid package to be requested in writing to the purchasing agent of the institution. Bid due date: 11/22/2006 @ 2 PM.

Department: Corrections
Location: State Correctional Institution at Mahanoy, 301 Morea Road, Frackville, PA 17932
Duration: December 1, 2006 to December 31, 2006
Contact: Dawn M. Troutman, Purchasing, (570) 773-2158

CN00023673. The State Correctional Institution at Laurel Highlands will be soliciting bids for Produce for December delivery. Interested vendors must be registered with the Commonwealth of PA to receive bids and purchase orders and should contact the Institution directly for a bid package. Bid opening date is 11-22-06 @ 1 PM.

Department: Corrections
Location: State Correctional Institution at Laurel Highlands, 5706 Glades Pike, Somerset, PA 15501-0631
Duration: 11/8/06 through 12/31/06
Contact: Theresa Solarczyk, Purchasing Agent II, 814 445 6501 x1232

CN00023647. Bid Opening Date: November 20, 2006 at 2:00 PM. The State Correctional Institution at Rockview will be soliciting for Produce: Fresh fruits and vegetables and/or ready-to-use vegetables for December, 2006. Deliveries to be made weekly as specified on bid. Vendor must be registered with the State of Pennsylvania and have a valid SAP vendor # to request bid packets.

Department: Corrections
Location: State Correctional Institution at Rockview, Box A, Rt. 26, Bellefonte, PA 16823
Duration: Month of December, 2006
Contact: Diane Baney, PA 2, 814-355-4874, ext. 206

cn00023646. 4 oz low fat yogurt and 4 oz frozen fruit juices for delivery from January through June of 2007. Bid closes 11/29/06

Department: Public Welfare
Location: Torrance State Hospital, Attn: Dietary Department, Torrance PA 15779
Duration: January through June of 2007.
Contact: Kristina Meighan, 724-459-4678

CN00023641. Fresh fruit and vegetables to be delivered on a weekly basis for the month of December 2006 to the State Correctional Institution at Retreat, Hunlock Creek, Pa. 18621. Prospective bidders must have a vendor identification number (SAP) issued by the Commonwealth of Pa.

Department: Corrections
Location: State Correctional Institution at Retreat, 660 State Route 11, Hunlock Creek, PA 18621
Duration: December 1, 2006—December 31, 2006
Contact: Barbara Swiatek, 570-674-2717

60973101. Contractor shall furnish and install latest models of vending machines and maintain, service and operate the machines for the sale of products at Torrance State Hospital.

Department: Public Welfare
Location: Torrance State Hospital, SR 1014, Torrance, PA 15779
Duration: 1/1/07 through 12/31/08
Contact: Nancy E. Byers

CN00023705. One month delivery of fresh fruits and vegetables beginning on Dec. 7 and deliveries will be weekly after that.

Department: Corrections
Location: SCI-Graterford, Off Rt 29, Graterford, PA 19426
Duration: One Month Dec 2006
Contact: Candee Hosband, PA1, 610-489-4151 ext. 2447

CN00023674. Beef and Beef Products, frozen. Refer to DPW special instructions and conditions. Bid open date 11/30/06. Prospective vendors must register with the Integrated Enterprise System (IES) at <http://www.vendorregistration.state.pa.us/>. DPW utilizes the information contained in the vendor master file for its procurement activities. Registered vendors who need to update or change the existing information in this file must contact IES and provide the changes or updates to IES. It is the vendor's responsibility to contact IES for changes, as DPW is unable to change vendor information. If you fail to update or change information, you may not receive requested bid information. Additional information please contact the purchasing office via email or phone.

Department: Public Welfare
Location: Wernersville State Hospital, P. O. Box 300, Route 422 & Sportsman Road, Wernersville, PA 19656
Duration: January—June 2007
Contact: Elsie Millington, 610-927-4700

Stackhouse Meals. Provide meals and complete meal services on an as needed basis for 9 to approximately 25 individuals using the PA Fish & Boat Commission's H. R. Stackhouse Training Facility located at Fisherman's Paradise, 1150 Spring Creek Road, Bellefonte, PA 16823 for the period January 1, 2007 through December 31, 2007. Bid due date: November 27, 2006.

Department: Fish and Boat Commission
Location: PA Fish & Boat Commission, H. R. Stackhouse Training Facility, 1150 Spring Creek Road, Bellefonte, PA 16823
Duration: December 31, 2007
Contact: Jennie Struble, 814-359-5131

CN00023654. Vendor to provide frozen meat deliveries for January through March 2007. Bid opening date and time is November 30, 2006 at 11 am.

Department: Corrections
Location: State Correctional Institution at Albion, 10745 Route 18, Albion, PA 16475
Duration: 3 monthly deliveries
Contact: Lesley S. Hill, 814-756-5778

CN00023660. Contractor to provide Fresh Fruit and Vegetables to the State Correctional Institution at Frackville. Contract period is for the month of December 2006 with weekly deliveries beginning December 7, 2006. Bid package available from the Purchasing Office at the institution. This notice will post monthly.

Department: Corrections
Location: State Correctional Institution—Frackville, 1111 Altamont Boulevard, Frackville, PA 17931
Duration: December 2006
Contact: Mary Lou Neverosky, Purchasing Agent II, 570/773-2158, Ext.419

CN00023676. Chicken and Chicken products frozen Refer to DPW special instructions and conditions. Bid open date 11/30/06. Prospective vendors must register with the Integrated Enterprise System (IES) at <http://www.vendorregistration.state.pa.us/>. DPW utilizes the information contained in the vendor master file for its procurement activities. Registered vendors who need to update or change the existing information in this file must contact IES and provide the changes or updates to IES. It is the vendor's responsibility to contact IES for changes, as DPW is unable to change vendor information. If you fail to update or change information, you may not receive requested bid information. Additional information please contact the Purchasing Office via email or phone.

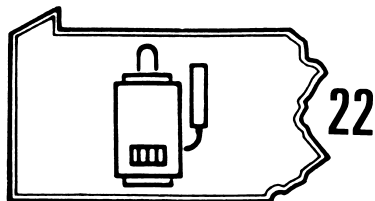
Department: Public Welfare
Location: Wernersville State Hospital, P. O. Box 300 Route 422 & Sportsman Road, Wernersville, PA 19565
Duration: January—June 2007
Contact: Elsie Millington, (610) 927-4700

CN00023682. Fresh produce for the month of December, 2006 for the State Correctional Institution at Forest, located in Marienville, PA. Bid documents contain the specific data.

Department: Corrections
Location: State Correctional Institution at Forest, One Woodland Drive, Marienville, PA 16239
Duration: December 1—31, 2006
Contact: Nancy Keller, 814-621-2110 x1109

cn00023691. Poultry Products

Department: Public Welfare
Location: Danville State Hospital, 200 State Hospital Drive, Danville, PA 17821
Duration: 01/01/07-3/31/07
Contact: Tina Robbins, 570-271-4578



HVAC Services

C-42B57-06-047.4. Provide all labor, material, devices, tools and equipment required for the construction of an electrical feed to a specialized rack for a trainer van. For a copy of the bid package, please fax your request to 717-861-2932 or e-mail to the address below. Bid opening will be Wednesday, December 6, 2006 at 2:00 PM.

Department: Military Affairs
Location: PA National Guard Armory, 108 Valley View Dr., Ford City, PA 16226-1219
Duration: Date of Award—30 April 2007
Contact: Brenda Lower, 717-861-2118

B-22914. Vendor to provide all labor, materials and equipment to remove and replace coal boiler ductwork at the State Correctional Inst. Graterford. New ductwork will be provided by the State Correctional Inst. Graterford.

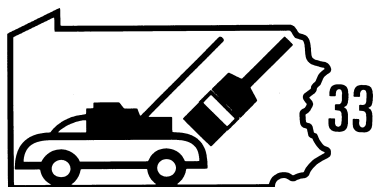
Department: Corrections
Location: State Corr. Inst. Graterford, Box 246, Rt. 29, Graterford, PA 19426
Duration: 3 months
Contact: Kelly Richardson, 610-489-4151

CN00023653. This contract is for the maintenance of the HVAC System for PennDOT Engineering District 1-0. All requests for bid packages must be via fax (814-678-7185) or email (aburak@state.pa.us)

Department: Transportation
Location: 255 Elm Street, Oil City, PA 16301
Duration: 1 year with one four year renewal
Contact: Amy Judson-Burak, 814-678-7185

Bid Number: CN00023698. The contractor shall provide all necessary supervision, labor, material and equipment to install a 600 cf exhaust fan to run 24/7 to keep the smoking room under negative pressure. Interested contractors may arrange a site visit by contacting Southwestern Veterans Center.

Department: Military Affairs
Location: Southwestern Veterans Center, 7060 Highland Dr., Pittsburgh, PA 15206
Duration: 12/20/2006—06/30/2007
Contact: Ken Wilson, 412-665-6727



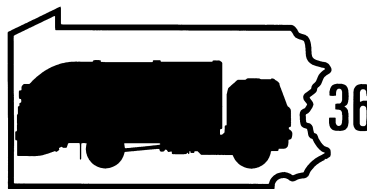
Property Maintenance

SP3860006. The Commonwealth of Pennsylvania, Department of Conservation and Natural Resources, Bureau of Forestry, requires services to plant approximately 364,634 seedlings (64,500 hardwoods and 300-134 conifers), for various Forest Districts in Pennsylvania. Interested vendors must be registered with the Commonwealth and have a registered vendor number. To register and obtain number, call 1-866-775- 2868 or online at www.vendorregistration.state.pa.us. Bid Opening Date/Time: 11/28/2006 @ 2:00 p.m.

Department: Conservation and Natural Resources
Location: Sprout State Forest, 15187 Renovo Road, Renovo, PA 17764.
Duration: Commence upon receipt of Purchase Order and Notice to Proceed letter, and terminates June 30, 2007.
Contact: Steven E. Smith, 717-783-1896

CN00023662. Snow plowing, salt, and cindering at Mansfield/Wellsboro Pa National Guard Armory. For a copy of the bid package please fax your request to 717-861-2932 or email to the address below. Bid opening will be Wednesday, November 22, 2006 at 2:00 PM.

Department: Military Affairs
Location: Mansfield/Wellsboro Armory, 1810 Shumay Hill Road, Wellsboro, PA 16901
Duration: DOA through 03/31/09
Contact: Sharon Wessner, 717-861-8519



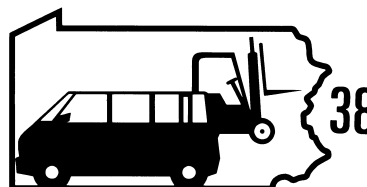
Sanitation

CN00023381. The Department of Conservation and Natural Resources, Bureau of State Parks, requires the services of a contractor to provide solid waste collection and disposal and recycling services at Hills Creek State Park, Tioga County, PA. Bid documents are available for download. When returning your bid to our Department reference the bid number, beginning with "CN" on the bid return envelope. The bidder is responsible for monitoring the DGS website to view any change notices or flyers to this RFQ. The change notices/flyers shall become incorporated as part of the bid documents. In order to be awarded a state contract, interested vendors must be registered and have a registered vendor number. To register and obtain a number, call CVMU at 1-866-775-2868 or online at www.vendorregistration.state.pa.us Bid opening date: 11/28/06, 2:00 PM.

Department: Conservation and Natural Resources
Location: Hills Creek State Park, 111 Spill Way Road Main Office, Wellsboro, PA 16901-7022
Duration: The contract shall commence upon execution and receipt of Purchase Order or January 1, 2007, whichever is later, and terminate December
Contact: Gloria Strawser, 717-783-0733

CN00023324. Department of Conservation and Natural Resources, Bureau of State Parks, requires the services of a contractor to provide solid wastecollection and disposal at Shawnee State Park, 132 State Park Road, Schellsburg, PA 15559-7300. Bid documents are available for download. The bidder is responsible for monitoring the DGS website to view any change notices/flyers to this RFQ. The change notices/flyers shall become incorporated as part of the bid documents. In order to be awarded a state contract, interested vendors must be registered and have a registered vendor number. To register and obtain a number, call CVMU at 1-866-775-2868 or online at www.vendorregistration.state.pa.us. Bid opening date: 11/28/2006, 2:00 PM.

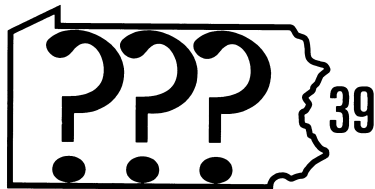
Department: Conservation and Natural Resources
Location: Shawnee State Park, 435 State Park Road, Route 96, Schellsburg, PA 15559-7308
Duration: The contract shall commence upon execution and receipt of Purchase Order or January 1, 2007, whichever is later, and terminates December
Contact: Gloria Strawser, 717-783-0733



Vehicle, Heavy Equipment and Powered Machinery Services

FM 9066. Furnish and install (2) Two-Post In ground frame contact vehicle lift at the Pennsylvania State Police, Transportation Division, 20th & Herr Streets, Harrisburg, PA 17120. Installing contractor shall be a manufactures authorized installer for this type of equipment. Detailed work schedule and bid specification must be obtained from the Facility Management Division at 717-705-5952. Last date to request detailed work schedule is November 30, 2006.

Department: State Police
Location: Pennsylvania State Police, Transportation Division, 20th & Herr Sts. Harrisburg, PA 17120
Duration: Within 120 days of award.
Contact: Helen Fuhrman, 717-705-595



Miscellaneous

RP-07-002. Brand Marketing, Web Design, And Web Content Management System
Qualified providers interested in being included on the bid list for this solicitation must respond to this ad with company name, address, phone/fax, contact person, and EIN number (or Social Security number, if individual) to the e-mail address below no later than November 28, 2006. A bid packet containing the complete Request for Proposal will be mailed to each respondent. Proposals must be received no later than 2 p.m., January 3, 2007. Questions concerning this Request for Proposal can be sent to the same e-mail address.

Department: State System of Higher Education
Location: Clarion University of PA, 840 Wood St., Clarion, PA 16214
Duration: 5 Years
Contact: Rein Pold, Director of Purchasing, 814-393-2166

CN00023665. "CareFoam" Recline chairs, extra covers and extra leg rest covers. Product to have a 3 year warranty. Willing to look at other brands that are "equal too" or the "same as" Carefoam Recline chair products. If bidding on brand other than listed, specs will need to be provided with bid. Prospective vendors must register with the Integrated Enterprise System (IES) at www.vendorregistration.state.pa.us or by calling the toll free number 1-866-775-2868. DPW utilizes the information contained in the vendor master file for its procurement activities. Registered vendors who need to update or change the existing information in this file must contact IES and provide the changes or updates to IES. It is the vendor's responsibility to contact IES for changes, as DPW is unable to change vendor information. If you fail to update or change information, you may not receive requested bid information. Please provide the following information when requesting bids: Name of Vendor, Address, Phone Number, Point of Contact (and their phone number) and Vendor Number. All Bids must arrive prior to the Bid opening date and time to be considered, and become property of the Commonwealth once submitted.

Department: Public Welfare
Location: South Mt. Restoration Center, 10058 South Mountain Road, South Mountain, PA 17261
Duration: Prices must be good for 90 days at time of bid opening on 12/06/06
Contact: Kay Whitsel, 717-749-4033

12WTGC. Department of Transportation. Contemplated sale of land no longer needed for Transportation purposes. Notice is hereby given that the Department of Transportation, pursuant to 71 P.S. § 513(e)(7), intends to sell certain land owned by it. The following is a list of the properties available for sale by the Department. Whiteley Township, Greene County. The parcel contains approximately 4399.57 SF (approximately 0.101 acres) of unimproved land situated along Township Road #604 (Roberts Road). Interested public entities are invited to express their interest in purchasing the site within 30 calendar days from the date of publication of this notice to: Department of Transportation, Attention: Right of Way Unit, PO Box 459, Uniontown PA 15401

Department: Transportation
Location: Department of Transportation, Attention: Right of Way, PO Box 459 Uniontown PA 15401
Duration: n/a
Contact: Frank Domenico, 724-439-7275

RFP 20061101. The Pennsylvania Liquor Control Board (PLCB) will be issuing an RFP for an Enterprise Resource Planning System and integrator. The project seeks to replace the PLCB's core accounting system and improve the efficiency of its retail and overall operations. The RFP will be available for downloading at www.dgs.state.pa.us and www.lcb.state.pa.us in the near future. Interested proposers should periodically monitor the above websites.

Department: Liquor Control Board
Location: Harrisburg
Contact: Larry Berger-Knorr, (717) 346-3374

[Pa.B. Doc. No. 06-2325. Filed for public inspection November 22, 2006, 9:00 a.m.]

DESCRIPTION OF LEGEND

- | | |
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| <p>1 Advertising, Public Relations, Promotional Materials</p> <p>2 Agricultural Services, Livestock, Equipment, Supplies & Repairs: Farming Equipment Rental & Repair, Crop Harvesting & Dusting, Animal Feed, etc.</p> <p>3 Auctioneer Services</p> <p>4 Audio/Video, Telecommunications Services, Equipment Rental & Repair</p> <p>5 Barber/Cosmetology Services & Equipment</p> <p>6 Cartography Services</p> <p>7 Child Care</p> <p>8 Computer Related Services & Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p>9 Construction & Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p>10 Court Reporting & Stenography Services</p> <p>11 Demolition—Structural Only</p> <p>12 Drafting & Design Services</p> <p>13 Elevator Maintenance</p> <p>14 Engineering Services & Consultation: Geologic, Civil, Mechanical, Electrical, Solar & Surveying</p> <p>15 Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core & Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p>16 Extermination Services</p> <p>17 Financial & Insurance Consulting & Services</p> <p>18 Firefighting Services</p> <p>19 Food</p> <p>20 Fuel Related Services, Equipment & Maintenance to Include Weighing Station Equipment, Underground & Above Storage Tanks</p> <p>21 Hazardous Material Services: Abatement, Disposal, Removal, Transportation & Consultation</p> | <p>22 Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental & Repair</p> <p>23 Janitorial Services & Supply Rental: Interior</p> <p>24 Laboratory Services, Maintenance & Consulting</p> <p>25 Laundry/Dry Cleaning & Linen/Uniform Rental</p> <p>26 Legal Services & Consultation</p> <p>27 Lodging/Meeting Facilities</p> <p>28 Mailing Services</p> <p>29 Medical Services, Equipment Rental and Repairs & Consultation</p> <p>30 Moving Services</p> <p>31 Personnel, Temporary</p> <p>32 Photography Services (includes aerial)</p> <p>33 Property Maintenance & Renovation—Interior & Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning & Planting, etc.)</p> <p>34 Railroad/Airline Related Services, Equipment & Repair</p> <p>35 Real Estate Services—Appraisals & Rentals</p> <p>36 Sanitation—Non-Hazardous Removal, Disposal & Transportation (Includes Chemical Toilets)</p> <p>37 Security Services & Equipment—Armed Guards, Investigative Services & Security Systems</p> <p>38 Vehicle, Heavy Equipment & Powered Machinery Services, Maintenance, Rental, Repair & Renovation (Includes ADA Improvements)</p> <p>39 Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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JAMES P. CREEDON,
Secretary

RULES AND REGULATIONS

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 41]

Medical Assistance Provider Appeal Procedures

The Department of Public Welfare (Department) adopts Chapter 41 (relating to Medical Assistance provider appeal procedures) to read as set forth in Annex A. This final-form rulemaking is adopted under the authority of 67 Pa.C.S. § 1106 (relating to regulations). The act of December 3, 2002 (P. L. 1147, No. 142) (Act 142) created 67 Pa.C.S. Chapter 11 (relating to Medical Assistance hearings and appeals). The proposed rulemaking was published at 34 Pa.B. 4447 (August 14, 2004).

Purpose of the Final-Form Rulemaking

The purpose of this final-form rulemaking is to ensure the just and speedy determination of Medical Assistance (MA) provider appeals.

Affected Organizations and Individuals

The final-form rulemaking affects the Department, the Bureau of Hearings and Appeals (Bureau), MA providers, private law firms and government attorneys who practice before the Bureau.

Accomplishments/Benefits

Parties who appear before the Bureau will be better informed of their rights, responsibilities and expectations in MA provider appeals and proceedings that are litigated before the Bureau.

Fiscal Impact

Public Sector

The final-form rulemaking will not impose additional costs on State and local governments.

Private Sector

The final-form rulemaking will not impose additional costs on the public sector.

General Public

The final-form rulemaking will not impose additional costs on the general public.

Paperwork Requirements

The final-form rulemaking will not require the completion of additional forms, reports and other paperwork.

Cross References

Part II of 1 Pa. Code (relating to the General Rules of Administrative Practice and Procedure) (GRAPP) and other applicable Departmental regulations apply to the practice and procedures in MA provider appeals, except as specifically superceded in relevant sections of the final-form rulemaking.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Discussion of Comments and Major Changes

Following is a summary of the major comments received following publication of the proposed rulemaking

and the Bureau's response to those comments. A summary of major changes from the proposed rulemaking is also included.

General—Regulations

A commentator suggested that the regulations do not achieve the intended statutory purpose, and that the regulations unreasonably and unnecessarily favors the Department's interest over those of providers.

Response

Consistent with 67 Pa.C.S. § 1106, Chapter 41 expressly guarantees the independence and impartiality of the Bureau hearing officers in deciding appeals. In considering the comments and drafting Chapter 41, the Bureau balanced the complexity of the adjudicative process against the time and expense associated with adjudicating appeals. Several changes, which are addressed as follows, were made in furtherance of balancing the interests and equities of the parties. For instance, proposed § 41.153(a) (relating to burden of proof and production) would have assigned the burden of proof to providers in all instances. However, after considering the comments, the Bureau has concluded that it is appropriate in some instances that the Department should bear the burden of proof, and § 41.153(a) has been amended to reflect that determination.

General—Regulations

A commentator suggested that Chapter 41 should require the Bureau to resolve provider payment and reimbursement decisions within a specific time period.

Response

Act 142 requires the Bureau to promptly adjudicate timely filed requests for hearing and to establish deadlines for interim and final actions by the Bureau and parties to any proceeding before the Bureau. Although Chapter 41 places no specific time limit for hearings, it does establish deadlines for pleadings, discovery and briefs, and for the Bureau to rule on dispositive motions and issue its determinations. Specific or numeric time limits for hearings do not take into account the unique or the complex nature of each appeal. In certain classes of appeals, § 41.92 (relating to expedited disposition procedure for certain appeals) provides for expedited appeal procedures. As written, the regulation contemplates that, unless the time frame is expanded due to joint case management motions, adjudications resolving the ordinary appeals generally will be adjudicated by the Bureau within 2 to 3 years of the time that the appeals are filed.

General—Regulations

One commentator requested clarification of the jurisdiction of the Bureau to resolve disputes.

Response

A Department action or decision is appealable only if the provider is "aggrieved" under 67 Pa.C.S. § 1102(a). For a provider to be aggrieved, the underlying adverse action must be adjudicative in character under 67 Pa.C.S. § 1101 (relating to definitions). "Adjudicative agency actions are those that affect one individual or a few individuals, and apply existing laws or regulations to facts that occurred prior to the adjudication." *Small v. Horn*, 585 Pa. 600, 722 A.2d 664 (1998). Act 142 specifies that hearings under the act only involve "adjudications of the Department relating to the administration of the

[MA] Program” and that encompass “action[s] relating to a provider’s enrollment in, participation in, claims for payment or damages under or penalties imposed under the program.”

When the Department undertakes an adjudicative action, Act 142 and this regulation apply and the aggrieved provider must file a timely and proper request for hearing to contest the action. Because an adjudicative agency action may be undertaken by a subordinate official, Act 142 and this regulation supersede 1 Pa. Code § 35.20 (relating to appeals from actions of the staff), which would otherwise permit a provider to appeal the action of a subordinate officer directly to the Secretary of the Department (Secretary). Under Act 142 and this regulation, an appeal must be filed with the Bureau.

Adjudicative actions do not include agency actions that are legislative in character—that is, actions that result in rules of prospective effect and bind all, or at least a broad class of, citizens. *Small v. Horn*. Under existing Pennsylvania law, the issuance of regulations is a legislative act, not an “adjudication.” *Laurel Lake Ass’n v. Pennsylvania Fish and Boat Comm’n*, 710 A.2d 129, 132 (Pa. Cmwlth. 1998); *Insurance Co. of North America v. Insurance Dept.*, 15 Pa.Cmwlth. 462, 327 A.2d 411 (1974). Consequently, a petition requesting the issuance, amendment or repeal of regulations does not involve an appealable adjudicative action and, therefore, would not fall within the scope of Act 142. Thus, the Bureau has no jurisdiction to consider these petitions, which should be filed under 1 Pa. Code § 35.18 (relating to petitions for issuance, amendment, waiver or deletion of regulations) and the GRAPP would apply in these matters.

The Bureau recognizes that a provider may request a waiver of a regulation or request declaratory relief without an underlying appealable action having been taken by the Department. As discussed as follows, these requests fall outside the scope of the jurisdiction conferred by Act 142. Instead, these requests must be made by petition under 1 Pa. Code § 35.18 and the GRAPP, which would apply in these matters.

So long as there is no underlying appealable “agency action,” the procedures governing petitions for relief are those in the GRAPP. When an appealable action is taken, however, Act 142 and the regulation will apply. Thus, the regulation requires that all issues and requests for relief relating to an appealable agency action, including requests for waiver of a regulation or a dispute over the applicability or meaning of a regulation or policy, must be set forth in a proper and timely request for hearing.

General—Regulations

Various commentators suggested that the Bureau possesses the power to waive the application of the Department’s regulations. In addition, the Independent Regulatory Review Commission (IRRC) suggested that 67 Pa.C.S. § 1105(a) (relating to determinations, review, appeal and enforcement) could be construed to grant these powers to the Bureau and stated that “the Department should clarify its rationale” for limiting the power to waive program requirements to the Secretary. Similarly, in commenting on § 41.191(b) (relating to determinations and recommendations by the Bureau), IRRC stated that the Department should either “delete language which restricts the Bureau’s authority to adjudicate waiver requests presented in a request for hearing, or explain its rationale for this restriction in the final-form regulation.”

Response

The Secretary is specifically vested under 67 Pa.C.S. § 1105(b)(3) with the discretionary authority to “waive compliance with program requirements, [in order] to promote fairness and the proper administration of the program.” While Act 142 grants various powers to the Bureau, it does not confer the power to waive regulations on Bureau. Since Act 142 expressly empowers the Secretary, but not the Bureau, with waiver authority, it demonstrates the General Assembly’s determination that the Bureau should not possess this authority. Moreover, that Act 142 mentions the Secretary’s waiver power as part of the appeal process that occurs only after the Bureau has concluded its work underscores the legislative intent that the waiver power should not be exercised by the Bureau in prior stages of the appeal proceedings.

The Department disagrees with IRRC’s view that the Bureau’s general authority to “adjudicate[e] . . . contested issues of fact and law,” and to issue “any appropriate order, decree or decision” implicitly and necessarily includes the power to waive compliance with the Department’s regulations. Regulations are rules of general applicability, adopted by an agency under its policymaking discretion and have the force and effect of law. They are binding on all providers and “substantial” but less-than-complete compliance with them is generally inadequate. *Ashton Hall, Inc. v. Department of Public Welfare*, 743 A.2d 529 (Pa. Cmwlth 1999). Thus, a waiver effectively excuses a provider from complying with a regulations with which all other providers are bound to comply.

The legislature’s decision to repose the exclusive authority to grant extraordinary relief in the Secretary is entirely reasonable and consistent with the preeminent role the legislature has assigned to the Secretary in administering the Commonwealth’s public health and welfare programs. Specifically, under section 403(a) of the Public Welfare Code (62 P.S. § 403(a)), the General Assembly has designated the Secretary as “the only person authorized to . . . interpret, or make specific the law administered by the department,” and has charged the Department which the Secretary manages with the duty to “maintain[] uniformity in the administration of public welfare . . . throughout the Commonwealth.” See also *Pelton v. Department of Public Welfare*, 514 Pa. 323, 330, 523 A.2d 1104, 1107 (1987) (“[I]t is the secretary alone who is authorized to establish and interpret rules, regulations and standards for eligibility [under the Public Welfare Code]”).

Further, the decision to grant or deny a waiver arises only after a determination is made that a provider is subject to the requirements of a regulation. Thus, it does not involve the determination of contested issues or fact or law. Rather, it is an issue involving the discretion and judgment of the policymaker. Conceptually, it is a post-hoc version of “prosecutorial discretion,” a power not possessed by adjudicative tribunals. See, for example, *Commonwealth v. Kratsas*, 564 Pa. 36, 764 A.2d 20 (1999). Unlike the Bureau, whose role is limited to serving as a quasi-judicial adjudicative tribunal, the Secretary has a multiplicity of roles and powers. Acting under quasi-judicial powers, the Secretary possesses the power to “affirm, reverse or modify the determination of the bureau” under 67 Pa.C.S. § 1105(b)(3). However, the Secretary’s power to “waive compliance with program requirements” is a discretionary power granted to the Secretary in the position as policymaker and, although Act 142 grants the Bureau the power to adjudicate

disputed issues of fact and law, it does not grant the Bureau the power to overrule the discretionary policy judgments of the Secretary.

Similarly, the Department disagrees with IRRC's interpretation the Bureau's authority to enter "any appropriate order, decree or decision" includes the power to waive regulations. Preliminarily, the word "appropriate" is a term of limitation, not authorization. Moreover, this provision must be read in the context of the rest of the sentence, including the reference to "contested issues of fact and law." Because the question whether to grant a waiver is not a "disputed issue[] of fact [or] law," and because the Bureau has no jurisdiction to grant or deny a waiver request, an order that purported to do so would not be "appropriate."

General—Disparity of Sanctions

A commentator expressed concern that the sanctions that could be applied to providers were more severe than those that may be applied to the Department.

Response

The regulation is consistent with the allocation of the burden of proof in provider appeals, with *Snyder Memorial Health Center v. Department of Public Welfare*, 898 A.2d 1227 (Pa. Cmwlth 2006) and the rules of the Federal Provider Reimbursement Review Board. If the party that bears that burden is sanctioned and cannot present evidence, it follows that that party cannot carry its burden, in which case judgment must be entered for the other side. On the other hand, if the party that does not bear the burden of proof is sanctioned, the party with the burden of proof still bears that burden. Therefore, judgment can only be entered on behalf of the latter party if that party satisfies its burden. As discussed elsewhere, § 41.153(a) now establishes a limited exception to the general rule that the provider bears the burden of proof. In that limited exception, the sanction of dismissal applies to the Department, rather than to the provider, but only as to those issues on which the Department bears the burden of proof.

General—1 Pa. Code § 35.19. Petitions for declaratory orders.

A commentator has suggested that the preclusion of requests for declaratory relief, which would correct and prevent misinterpretation or misapplication of law, regulations, policies or other guidance or instructions by a program office, prevents the Bureau from making "any appropriate order, decree or decision" or to determine contested issues of facts and law and make a decision. The same commentator suggests that declaratory relief is often appropriate for the resolution of provider appeals, as contemplated by Act 142.

Response

Declaratory relief involves a determination of a justifiable controversy when the plaintiff is in doubt as to its legal rights and duties and is not (yet) aggrieved. If a provider is aggrieved by an adverse agency action, substantive relief on the merits is available, the order to resolve the issue is not declaratory, and declaratory relief is unnecessary and unavailable. If a nonaggrieved provider seeks declaratory relief, the provider must seek it through a petition for relief.

Declaratory relief is unavailable when an action is filed in anticipation of another proceedings. *Department of General Services v. Frank Briscoe Co., Inc.*, 502 Pa. 449, 466 A.2d 1336 (1983). Therefore, if the provider has already been cited for a violation of the regulation,

§ 41.42(b) (relating to request for declaratory relief) requires that the issue raised in the petition must be set forth in the context of a request for hearing, and the petition for relief cannot be used to avoid or disrupt the Department's enforcement of the regulation.

Section 403(b) of the Public Welfare Code designates the Secretary as the sole person authorized to adopt orders that interpret or make specific the laws administered by the Department. *Department of Public Welfare v. Presbyterian Medical Center of Oakmont*, 877 A.2d 419 (Pa. 2005). The Department interprets this provision to mean that the power to grant declaratory relief is vested with the Secretary and not with the Bureau.

§ 41.1. Scope.

Several commentators and IRRC raised several concerns including that the effective date of the final-form rulemaking is contrary to law and inconsistent with the Secretary's expressed effective date and must be changed. They asserted that the regulation cannot be effective unless, and until, the Department amends the rulemaking to invoke its authority under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) to adopt rules of procedure inconsistent with the GRAPP. They also asserted that the regulation does not result in an independent forum designed to hear other kinds of provider matters de novo.

Response

Chapter 41 is not exclusive and does not override current Departmental practice or regulations when Chapter 41 is silent. The Bureau is the statutorily mandated forum for hearing provider appeals under Act 142 and is charged by the same statute with the de novo hearing and adjudication of appeals in a fair and impartial manner. Chapter 41 has specifically been designed to advance the speedy and efficient adjudication of disputes. For due process reasons, Chapter 41 has been revised to be effective from the date of publication. Appeals filed prior to that date will be governed by the Bureau's standing practice order (SPO), published at 33 Pa.B 3053 (June 28, 2003) or by earlier rules of procedure in the GRAPP.

Act 142 grants to the Bureau the power to adopt these procedural regulations. The regulations are designed to address all types of provider appeals, including, but not limited to, the numerous appeals that are typically filed by nursing facility providers. The regulations strike an appropriate balance. Sections 501—508 and 701—704 of 2 Pa.C.S. do not limit or affect the authority granted by Act 142 and, to the extent that the regulations enacted under that authority expressly or implicitly supersede provisions in the GRAPP, these regulations necessarily prevail.

§ 41.1(b). Scope.

One commentator raised the concern that this provision is too vague and unfairly incorporates by reference unspecified Departmental regulations and this reference should be stricken.

Response

The individual sections of the regulation identify the provisions of the GRAPP and the Department's other regulations that are superseded. In the event that another regulation appears to conflict with provisions of Chapter 41, the Bureau will resolve these issues on a case by case basis.

§ 41.1(c). Scope.

One commentator raised the concern that this section may confuse providers or be used to preclude appeals

brought by recipients of MA. The commentator further suggested the section be changed to show that appeals under Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) remain unaffected by § 41.1(c). Another commentator suggested that § 41.1(c) conflicts with Act 142.

Response

Section 41.1(c) differentiates between the two classes of appeals: recipient appeals and provider appeals. Recipient appeals are filed under Chapter 275. Act 142 only pertains to provider appeals.

§ 41.2. Construction and application.

Two commentators stated that § 41.2 does not provide for conflicts between Act 142, the regulations and "other applicable Department regulations." Another commentator found this section incomplete in that it fails to provide the Bureau with authority to waive strict compliance with procedures.

Response

Chapter 41 does not conflict with Act 142 but, if it were to conflict, the statutory provision in Act 142 would necessarily prevail. Chapter 41 governs practice and procedure in MA provider appeals. To the extent that other regulations of the Department also affect practice and procedure in those appeals, the Bureau will seek to harmonize those regulations with Chapter 41. In the event that a particular provision cannot be harmonized with Chapter 41 and does conflict, the provision of Chapter 41 will control, but only to the extent that it affects practice and procedure in provider appeals before the Bureau.

§ 41.3. Definitions.

One commentator suggested § 41.3 redefines "hearing" as something different than Act 142. Another commentator and IRRC suggested that "senior Department official" is defined too broadly. A third commentator felt that the definitions excluded audit appeals from audits by the Attorney General.

Response

Act 142 uses "hearing" in a variety of ways. The definition of that term in § 41.3 reflects those uses.

Act 142 defines "hearing" to be a "proceeding" started by a provider under 67 Pa.C.S. § 1102(a). When used in this manner, the term is synonymous with terms such as "action," "appeal" and "matter" used in 2 Pa.C.S. § 101 (relating to definitions). Subparagraph (i) of the definition of "hearing" in § 41.3 is consistent with that usage.

In some instances, Act 142 uses "hearing" to refer to parts of an action at which evidence is presented and interlocutory disputes are considered and resolved. For example, see 67 Pa.C.S. § 1102(e)(1) and (2) and 67 Pa.C.S. § 1104 (relating to subpoenas). Subparagraphs (ii) and (iii) of the definition of "hearing" reflect these uses. In addition, to improve the clarity of the regulation, the Bureau has retained the term "provider appeal" as a synonym for "hearing" as defined by 67 Pa.C.S. § 1101. As retained, the term does not encompass actions started by "petitions for relief."

The term "senior Department official" has been amended to exclude clerical staff who work for the Secretary. To the extent that the Department uses an audit issued by the Auditor General to set rates or to take some other agency action from which a provider is aggrieved, the provider would be required to file a request for hearing with the Bureau contesting the findings in the

audit. See *Temple University v. Auditor General*, 403 A.2d 1048 (Pa. Cmwlth 1979). Act 142 and Chapter 41 apply to these appeals.

§ 41.5. Jurisdiction of the Bureau.

Various commentators and IRRC expressed concerns about the apparent limitation of the Bureau's jurisdiction in § 41.5(b) and (c). One commentator viewed § 41.5(e) as unnecessary and suggested the subsection should be deleted to avoid confusion and potential litigation with Medicaid providers over actions taken by Federal agencies.

Response

As previously discussed, the Bureau only has jurisdiction to hear a provider appeal if the provider aggrieved by an adjudicative act of the Department. Also as previously discussed, if an aggrieved provider files a request for hearing and, therein, asks that the application of a regulation or other program requirement be waived, 67 Pa.C.S. § 1105(b)(3) specifies that the relief may only be granted by the Secretary. Therefore, in a provider appeal, the role of the Bureau is limited in the manner in § 41.5(b). The process on waiver requests fulfills the requirements placed upon the Bureau by Act 142 to review independently, to make a record and to present a recommendation to the Secretary for final administrative action. Section 41.5(d) necessarily limits the jurisdiction of the Bureau to exclude proceedings which, although a Departmental action, require appeal to the Department of Health and Human Services under the *Code of Federal Regulations*.

§ 41.12(e). Form.

IRRC questioned why a legal document could not be electronically submitted.

Response

The Bureau currently does not have the capacity to accept or to log large scale electronic filings. The Bureau will continually review technology and funding to see if and when electronic filings may be feasible.

§ 41.14. Verification.

One commentator suggested the verification requirement is unduly burdensome and overly broad and consequently should be eliminated.

Response

Courts routinely require litigants to verify facts in the documents that they file. See, for example, Pennsylvania Rule of Civil Procedure (Pa.R.C.P.) 1024 (relating to verification). The Bureau has determined that verification should likewise be required in MA provider appeals. A fact contained in a pleading or legal document that has not been previously verified or stipulated by the parties must be verified in the specified form or in a form that substantially complies with this section. Therefore, § 41.15 imposes no more burden than would be required if 1 Pa. Code § 33.12 (relating to verifications) were applicable.

§ 41.15(c). Copies of documents.

One commentator suggested § 41.15(c) should be amended to provide a process by which protected information will be identified and redacted.

Response

Section 41.134 (relating to discovery motions) addresses the commentator's concern. Section 41.134 allows for

Motions in Limine to be entertained at any time, before, with or after filing if needed to protect information protected by law.

§ 41.21. Notice of agency actions.

Various commentators raised concerns of sufficiency of notice in § 41.21(a)(3), which permits notice in the *Pennsylvania Bulletin* of an agency action affecting a general class of providers.

Response

Generally, the Department notifies providers of agency action by first class mail. In some limited instances, however, the Department's regulations specify that the Department will notify providers of an appealable agency action by publication in the *Pennsylvania Bulletin*. For example, the Department annually publishes a public notice announcing the "peer group prices" for the nursing facilities enrolled in the MA Program and § 1187.141(a)(1) (relating to nursing facility's right to appeal and to a hearing) expressly permits the individual nursing facility providers to contest the peer group prices by filing appeals with the Bureau. In addition, this section permits the Department to provide notice by publication when other forms of notice are unavailable or impracticable.

§ 41.22. Service of pleadings and legal documents.

IRRC suggested changing the term "General Counsel" in § 41.22(1)(ii) and (2)(ii) to "Chief Counsel" to maintain consistency with § 41.112(b) (relating to filing of position paper).

Response

The subparagraphs were changed to correspond with IRRC's suggestion.

§ 41.25. Amendment or withdrawal of legal documents.

One commentator noted concern that § 41.25 may be interpreted as interfering with the right of a provider to withdraw its appeal and will generate unnecessary motion practice before the Bureau. Another commentator is concerned that § 41.25 incorrectly supersedes 1 Pa. Code §§ 33.41, 33.42 and 33.51 (relating to amendments; withdrawal or termination; and docket). The same commentator noted the Bureau has not followed the practice of other Commonwealth agencies in either adopting 1 Pa. Code § 33.51 or another, separate regulation with the same language which permits public access to docketing information.

Response

Section 41.25 does not concern the withdrawal of provider appeals. A separate section, § 41.83 (relating to withdrawal of provider appeals), provides a specific appeal procedure and does not generate motion practice. The Bureau is currently reviewing various methods of installing computers and software in the Bureau's main regional offices for the public to review docket information. Under 67 Pa.C.S. § 1102(E)(2)(viii), the Bureau has created a researchable electronic index of Act 142 decisions, which is accessible at www.dpw.state.pa.us/oa/bha/searchdecisions.asp.

§ 41.31(a). Request for hearing.

Two commentators raised a concern that, as presently worded, the section is too subjective as to what constitutes an appeal and that the section excludes the acts of Departmental subordinates as being appealable.

Response

Under 67 Pa.C.S. §§ 1101 and 1102(a) and (b)(2), the Department must have undertaken some affirmative action of an adjudicative nature for a right to a hearing to arise. Moreover, 67 Pa.C.S. § 1102(b)(2) requires that, for a provider's right to appeal to arise, the provider must have received a written notice "notice of departmental action" from the Department. An MA provider's right to appeal an agency action is not dependent on the management level at which the action was taken, but on whether the action was an "adjudication" and whether it has caused the provider to be "aggrieved."

§ 41.31(b). Request for hearing.

Several commentators asserted that the detail in pleading an appeal creates an onerous burden on a provider and suggested this subsection be amended to require that the Department answer hearing requests. One commentator indicated this subsection improperly restricts a provider's ability to seek declaratory relief before the Bureau.

Response

The Department's written notices of agency actions are required to and generally contain sufficient information for providers to determine if and why they disagree with an agency action. For example, when the Department issues a notice of termination under § 1101.77 (relating to enforcement actions by the Department), the notice states the basis for the action, the effective date of the action and whether and when the Department will consider re-enrolling the provider. See § 1101.77(d). Thus, providers are routinely provided with sufficient information to determine whether they are aggrieved and what issues they wish to pursue. The requirement for detailed pleadings and identification of specific issues arises from the technical nature of the subject matter and the need to narrow factual and legal issues for a quicker decision during the appeal process.

The requirement of detailed pleading by providers is not new. Department regulations have long required that all MA providers "explain in detail the reasons for [their] appeal" in their notices of appeal (§ 1101.84(a)(4) (relating to provider right of appeal)), and, since January 1996, have required that appeals by MA nursing facility providers "state in detail the reasons why the facility believes the [Department's] decision is factually or legally erroneous and the specific issues that the facility will raise in its appeal" (§ 1187.141(d)(2)).

Most providers know why they disagree with a Department determination when they file an appeal. In the relatively few instances when the reasons for the Department's actions may be unclear, the statute and the regulation allow providers an additional 90 days to evaluate the Department's determination. This additional period permits providers a sufficient amount of time to identify the bases for their appeals in the majority of cases.

The Department is not required to plead an answer to the appeal. This requirement would extend the adjudicatory timeline and is unnecessary, as the Department's answer would be duplicative of the notice of departmental determination, which announces the agency action being appealed. The unavailability of declaratory relief before the Bureau is previously explained.

§ 41.31(d)(4)(iii). Request for hearing.

IRRC suggested the subparagraph should include a reference to 1 Pa. Code § 35.19 (relating to petitions for declaratory orders).

Response

The Bureau changed § 41.31(d)(4)(iii) as suggested. § 41.31(e). *Request for hearing.*

Two commentators suggested it is unduly burdensome to require a provider to attach a copy of the entire written notice when there is no transmittal letter, the elimination of this requirement would reduce the amount of paper-work required of providers and that the Bureau should only require the attachment of those pages which indicate the rejection of the invoices.

Response

For the Bureau to determine whether it has jurisdiction to hear an appeal, the Bureau must examine the notice of departmental determination and, to facilitate the review, access to the entire notice is necessary. There is very little burden on providers to attach the adverse action notice. Since the SPO was promulgated in 2003, this requirement has not proven burdensome to providers. In most cases, the adverse action letter is one to three pages. In the limited cases of appeals that fall under § 41.92, the provider may provide the Remittance Advice Notice, the invoices and adverse action letter that indicates the rejection of the invoices.

§ 41.32. *Timeliness and perfection of requests for hearing.*

One commentator suggested the language should be revised to clarify that issues presented with sufficient specificity will not be dismissed.

Response

The provision is already sufficiently clear. Section 41.32(d) and (e) requires providers to identify the facts, issues and requested relief with specificity. By doing so, the Bureau and the opposing parties will understand why the appeal has been filed. If the provider meets the requirements of § 41.32(d) and (e), then the appeal will not be dismissed.

§ 41.32(a)(2). *Timeliness and perfection of requests for hearing.*

IRRC suggested the Department explain when and in what other manner would the Department give notice to the provider and when the Department would not contact a provider by mailing notice.

Response

The explanation of the Department's use of the *Pennsylvania Bulletin* to provide notice is set forth in the response to questions on § 41.21 (relating to notice of agency actions).

§ 41.32(c)(2)(ii). *Timeliness and perfection of requests for hearing.*

Two commentators suggested § 41.32(c)(2)(ii) should be deleted because there is no justification for precluding an amendment when the Department failed to provide a full and accurate disclosure and later discovered information contradicts the previously disclosed information.

Response

The statutory requirement that appeals be timely filed, and the limitation on amendments to those appeals as of right, is a jurisdictional requirement. *J. C. v. Department of Public Welfare*, 720 A.2d 193 (Pa. Cmwlth 1998); *Divine Providence Hospital v. Department of Public Welfare*, 463 A.2d 118 (Pa. Cmwlth 1983). When the Bureau published the proposed SPO, the 90-day amendment period would have made no allowance for amendments nunc pro tunc. Requiring the same nunc pro tunc showing for an amend-

ment is consistent with Act 142 and adequately addresses the concerns of the commentators. By providing this exception, § 41.32(c)(2)(ii) reduces the likelihood of a need to reopen the record as provided for in § 41.201 (relating to reopening of record prior to adjudication).

§ 41.32(d). *Timeliness and perfection of requests for hearing.*

One commentator suggested this section is overly broad, divests the Bureau of its inherent discretion and should be revised to replace "shall" with "may."

Response

According to Act 142, the Bureau's jurisdiction is limited to appeals that are "timely filed" or appeals that satisfy the standard for being heard nunc pro tunc. In addition, the Bureau will only adjudicate the "factual and legal issues raised by a provider in the request for hearing . . ." See 67 Pa.C.S. § 1102(e)(2)(iii) and (vii). Under 67 Pa.C.S. § 1102(d), a provider can only amend its request for hearing as of right within 90 days of the date that it was originally filed. Section 41.33(d) (relating to appeals nunc pro tunc) reflects these limitations. The same limitations routinely appear in similar rules of court.

§ 41.32(e). *Timeliness and perfection of requests for hearing.*

One commentator and IRRC stated concerns that this section limits the inherent authority of the Bureau and compels the Bureau to dismiss an appeal without consideration of the relevant facts and circumstances.

Response

The Bureau's jurisdiction to hear providers' appeals exists under Act 142. Section 1102(e)(2)(iii) of 67 Pa.C.S. grants the Bureau the authority to "adjudicate timely filed requests for hearing." In addition, 67 Pa.C.S. § 1102(c) grants the Bureau the authority to hear appeals nunc pro tunc, but only if certain requirements are met. Read together, these provisions mean that, unless a provider makes a "written request . . . for a hearing nunc pro tunc," and satisfies the burden off "good cause shown," the Bureau has no jurisdiction to hear the untimely appeal. Therefore, it is the responsibility of the provider to present the Bureau with the "relevant facts and circumstances."

§ 41.32(f). *Timeliness and perfection of requests for hearing.*

One commentator suggested this section should be subject to the requirements of § 41.32(g), which requires the Bureau to issue a rule to show cause if the dismissal is based upon the Bureau's own motion. Another commentator and IRRC suggested this section limits the Bureau's inherent authority because it compels the Bureau to dismiss an appeal without consideration of the relevant facts and circumstances. One commentator suggested this section creates a potential for abuse by the Bureau because it does not require the Bureau to include a reason for the dismissal in its order.

Response

As previously discussed, the timeliness of an appeal is a jurisdictional requirement. Consequently, timeliness can be addressed by the Bureau sua sponte. Because a program office is required to serve its motions on the provider, after which the provider has the opportunity to file an appropriate response with the Bureau, § 41.32(f) and (g) only applies to a dismissal made by the Bureau on its own motion. If the Bureau believes the conditions of

§ 41.32(f) are met, the Bureau will issue a rule to show cause and allow the provider an opportunity to respond. Section 41.32(d) and (e) requires providers to identify the facts, issues and requested relief with specificity. By doing so, the Bureau and the opposing parties will understand why the appeal has been filed with the Bureau. If the provider meets the requirements of § 41.32(d) and (e), its appeal will not be dismissed. The Bureau's practice has always been to notify parties of the reasons for its orders.

§ 41.33. Appeals nunc pro tunc.

One commentator suggested § 41.33 should include granting a hearing or an amendment nunc pro tunc when an intervening natural disaster or action of third parties make timely compliance impossible or unsafe. The commentator also suggested the Secretary may grant leave to a party to file a request for review of the Bureau when an intervening natural disaster or action of third parties makes timely compliance impossible or unsafe. The commentator also suggest that the section supersede §§ 1187.1(d) and 6210.14(b) (relating to policy; and time extensions).

Response

When considering the issue of appeals nunc pro tunc, the Bureau will apply the standards in *Bass v. Commonwealth*, 485 Pa. 256, 401 A.2d 113 (1979), and its progeny. These common law standards establish specific criteria to determine whether or not a delay in the filing of the appeal was caused by extraordinary circumstances involving fraud or some breakdown in the administrative process or non-negligent circumstances related to the appellant, his counsel or a third party. *H.D. v. Pennsylvania Department of Public Welfare*, 751 A.2d 1216 (Pa. Cmwlth. 2000). The Bureau amended § 41.33 to supersede §§ 1187.1(d) and 6210.14, but only insofar as these sections affect the time for filing a provider appeal or for amending a provider appeal.

§ 41.41. Waiver request.

One commentator suggested this section precludes the beneficial effects of waiver requests. The commentator believes this section is inconsistent with the limitations on the Bureau's jurisdiction conceded in § 41.5(c) (relating to jurisdiction of the Bureau). Two other commentators suggested this section is beyond the scope of the rulemaking authority granted by Act 142 and this section improperly restricts the ability of a provider to obtain consideration of waivers. A fourth commentator suggested the Bureau should be required to provide notice to a provider of a nonconforming petition or request with the opportunity for revision rather than outright dismissal. IIRC suggested § 41.41(c) be clarified to specify the dismissal for failure to include the waiver petition will only occur in a given case.

Response

The Bureau's lack of jurisdiction to grant a waiver request and the process for addressing requests in the context of a request for hearing are previously discussed.

§ 41.42. Request for declaratory relief.

One commentator suggested this section fails to achieve a just, speedy and inexpensive resolution of issues and disputes, and it requires unnecessary procedures for the preservation of rights. The commentator proposed a change that sets up procedures when a request for declaratory order has been included in a request for hearing and the same request is also filed in a petition for relief. Another commentator suggested the section

alters the nature of proceedings based on petitions for relief and declaratory relief that exceed the scope of Act 142.

Response

Declaratory relief involves a determination of a justifiable controversy when the plaintiff is in doubt as to its legal rights and duties and is not (yet) aggrieved. If a provider is aggrieved by an adverse agency action, substantive relief on the merits is available and declaratory relief is unnecessary and unavailable. If a nonaggrieved provider seeks declaratory relief, the provider must seek it through a petition for relief.

Declaratory relief is unavailable when an action is filed in anticipation of another proceeding. *Department of General Services v. Frank Briscoe Co., Inc.*, 502 Pa. 449, 466 A.2d 1336 (1983). Therefore, if the provider has already been cited for a violation of the regulation, § 41.42(b) requires that the issue raised in the petition must be set forth in the context of a request for hearing and the petition for relief cannot be used to avoid or disrupt the Department's enforcement of the regulation.

§ 41.43. Request for issuance, amendment or deletion of regulations.

One commentator suggested this section conflicts with Act 142 by attempting to limit the Bureau's authority to conduct de novo review. IIRC suggested that clarity might be achieved if the section was amended to include citations to the GRAPP or other related regulations concerning procedures to filing for this type of relief.

Response

The decision to issue, amend or delete a regulation is a nonadjudicative policy decision and is not appealable. *Laurel Lake Association, Inc. v. Pennsylvania Fish and Boat Commission*, 710 A.2d 129 (Pa. Cmwlth 1998). This section merely declares a provider who seeks the issuance, amendment or deletion of a regulation needs to do so by filing a petition for relief. The section was changed to include reference citations to GRAPP.

§ 41.51. General.

IIRC commented that § 41.51(f) should include a list of examples from the Department as to what appropriate sanctions, other than costs, would be imposed on a party who files a petition for supercedeas in bad faith or on frivolous grounds.

Response

Other appropriate sanctions will be based on case law for similar sanctions within the judicial system and case law. One example is barring the attorney, who knowingly filed a bad faith or frivolous petition, from practicing before the Bureau. Several factors will be reviewed on a case-by-case basis such as the severity of the violation and the history of violations.

§ 41.53. Circumstances affecting grant or denial.

Three commentators suggested this section established an irrebuttable presumption that injury to the public health, safety or welfare "shall be deemed to exist" whenever State or Federal law or regulation requires that an action take effect prior to the final determination of an appeal. They also assert that this section unduly limits the authority of the Bureau to consider all relevant circumstances when determining whether a supercedeas should be issued. IIRC suggested the Department should clarify whether the elements in § 41.53(a) will always be considered or if a combination will be considered. IIRC also suggested the Department should include examples

of or specific citations to State and Federal law that would be used as a basis for denying supersedeas.

Response

Except to the extent that case law indicates that less than all of the elements must be satisfied, a provider will be required to satisfy all of the elements in § 41.53(a) to obtain an order of supersedeas.

The second sentence of subsection (b) does not set forth a presumption. Rather, it encapsulates the well-established rule of law that a violation of law constitutes per se irreparable harm and that no further proof of harm is needed. *Pennsylvania Public Utility Commission v. Israel*, 356 Pa. 400, 52 A.2d 317 (1947). Likewise, if State or Federal law mandates a particular act, Act 142 does not grant the Bureau the power to bar or delay that act.

§ 41.61. Filing of petitions to intervene.

One commentator suggested this section should be revised to be consistent with 1 Pa. Code § 35.30 (relating to filing of petitions to intervene).

Response

To promote judicial economy, time constraints are necessary to provide a fair and expeditious hearing. Without a time constraint, a case could become delayed due to a last-minute intervention. This section allows the Bureau to extend the time period for an intervening party if good cause is shown and is similar to the process used in 1 Pa. Code § 35.30. Section 41.61 allows for filing of petitions to intervene after the deadline upon a showing of extraordinary circumstances and for good cause.

§ 41.71. Answers generally.

One commentator suggested the Department should be required to file answers to hearing requests in the same way a defendant answers a complaint. Several legislators noted the section should be amended because providers are required to file a detailed complaint, but the Department does not have to file an answer until discovery is complete.

Response

The Department previously will have notified the provider with an adverse action notice detailing the reasons for the Department's action. Requiring an answer by the Department to the request for a hearing would be unnecessary and redundant and would unnecessarily extend the timeline of the appeal process.

§ 41.81. Consolidation of provider appeals.

One commentator suggested this section should be revised to limit the discovery to both parties upon consolidation. Another commentator suggested this section should be amended to permit providers to consolidate requests for a hearing from the outset to ensure efficiency.

Response

This section does not limit the discovery available to providers under the regulation. This section compels the providers to comply with § 41.120 (relating to limitations on scope of discovery), which limits discovery for all of the parties involved in a particular case. If a provider is aggrieved by an action of the Department, the provider will be willing to file a request for a hearing by his own volition. Otherwise, one provider, who is truly aggrieved, may solicit other providers to join in the request for a hearing when the other providers are not truly injured by the action of the Department. This section ensures that providers will file appeals only when they are truly

aggrieved by the actions of the Department. This section will prohibit providers from frivolously joining in hearing requests of other providers.

§ 41.83. Withdrawal of provider appeals.

Two commentators suggested a voluntary withdrawal of an appeal should be without prejudice because this section is contrary to Federal Rule of Civil Procedure 41(a) (relating to voluntary dismissal; effect thereof). IRRC requested the Department explain why withdrawn appeals are with prejudice.

Response

A provider's power to withdraw an appeal is not the power to unilaterally suspend the matter until some later time of the provider's choosing. When a provider withdraws an appeal, the provider unilaterally terminates that appeal. Having abandoned the pursuit of its right to obtain quasi-judicial review of the Department's adverse action, the general rule is that the withdrawal is deemed to be with prejudice. Nonetheless, the Bureau has amended § 41.83(b) to allow for the possibility that, in certain instances, a withdrawn appeal might be reopened.

§ 41.92. Expedited disposition procedure for certain appeals.

One commentator suggested revising this section to allow parties to opt into rather than opt out of the expedited procedures upon stipulation by the parties or upon motion with good cause shown. According to the commentator, good cause exists in utilization review cases when the payments were improper for either lack of medical necessity or lack of documentation demonstrating medical necessity or the recovery is based on provider misconduct. IRRC believes parties should be allowed to opt in rather than opt out with respect to expedited disposition.

Response

The section provides for an expedited procedure for provider appeals in these instances: the denial of claims for payment through the prior authorization process; the denial of requests for precertification; the recovery of overpayments or improper payments through the utilization review process; the denial of claims upon prepayment review; and the denial of claims for payment under § 1101.68 (relating to invoicing for services). This section facilitates the prompt resolution of disputes and permits an impartial hearing official from the Bureau to assess whether a case warrants a protracted proceeding. Otherwise, the provider would have too much authority to control the appeal process while the Department would not. The regulations do not preclude the Department or the provider from filing an appropriate motion with the Bureau if the facts of the case warrant. Forcing small providers to opt into the expedited proceeding would compel them to expend additional funds for the advice of legal counsel to make this judgment.

§ 41.111. Disclosures.

One commentator asserted that the disclosure process is not designed to assure a just, speedy and inexpensive determination of provider appeals and could be "subject to abuse" by the program office staff. The commentator also asserted that the burden rests upon the provider to find relevant information while not requiring the agency to produce it. IRRC suggests that both the Department and the provider must comply with § 41.111(f). One legislator noted that the section should be amended because the Department is not required to make the same specific disclosures as is required for the providers.

Response

To facilitate the expeditious disposition of cases, the section should equally apply to both the provider and to the Department. Otherwise, one party could obstruct the discovery process for its tactical advantage. Also, it protects the integrity and the fairness of the process. A party may file a motion with the Bureau if it perceives that the opposing party is in noncompliance and the Bureau will review each motion on a case-by-case basis. A party may file a motion under §§ 41.131–136 (relating to motions).

§ 41.112. Filing of position paper.

One commentator notes standards should be equal for both parties when filing prehearing position papers. Also, another commentator advised that both the Department and the provider should receive equivalent sanctions for failing to file position papers within a certain period (§ 41.112(a) and § 41.113(b) (relating to content of provider position paper)). IRRC believes equal penalties should be imposed for both providers and the program office for failing to file position papers timely.

Response

As set forth in § 41.153(a), the general rule is that the provider bears the burden of proving that the contested agency action is in error. Because the provider bears the burden of proof, if it fails to file its position paper without good cause within the time limits in the section, the Bureau will enter an order against that party. If the program office does not carry the burden of proof, its failure to file its position paper timely and without good cause does not create a situation when the provider is entitled to judgment in its favor as a matter of law. Therefore, in an instance such as this, the Bureau will bar the program office from presenting evidence and witnesses at the hearing.

In those situations when the Department bears the burden of proof, the effect of this rule is reversed and it is the Department that bears the risk of dismissal (but only as to those issues on which it bears the burden of proof). The section is revised to reflect the greater burden on the party carrying the burden of proof. Nothing in § 41.112 should be construed to disallow properly submitted impeachment evidence.

§ 41.113. Content of provider position paper.

One commentator noted position papers cannot always quantify the amount in dispute because the Department has not published its database information. There was a suggestion the provider only be required to identify regulations that, if continued in effect, are applicable to determining amounts in the future.

Response

The position paper must state the relevant facts and present arguments setting forth the position of the party with the burden of proof. The section was amended to require the party carrying the burden of proof (as opposed to always being the provider) to state the relevant facts and present the appropriate arguments to set forth the party's position. That party must include the monetary amount in dispute. There are situations when the party carrying the burden of proof cannot specify the exact monetary amount in dispute but can identify regulations, which apply to ascertaining this amount at a future time. The section was amended to address situations when the failure to disclose is not the party's fault and must rely upon the opposing party or a third party to obtain this information.

§ 41.114. Content of program office position paper.

One commentator noted §§ 41.113 and 41.114 fail to supersede the inconsistent requirements of 1 Pa. Code §§ 35.164 and 35.165 (relating to documents on file with agency; and public documents).

Response

Section 41.114 is amended to require the party that does not carry the burden of proof to present to the opposing party (that is, the party carrying the burden of proof) a copy of every document it will offer into evidence to support its position on each issue identified in its position paper. This section conflicts with 1 Pa. Code §§ 35.164 and 35.165, which do not require the party to produce and to copy documents which it will use at the hearing. Sections 41.113 and 41.114 were amended to supersede 1 Pa. Code §§ 35.164 and 35.165. This section was also amended to show it applies to the party that does not carry the burden of proof, referred to as the opposing party.

§ 41.115. Statement regarding expert opinions.

IRRC noted subsection (c) lists the requirements for expert opinion statements. This subsection should also include the expert's qualifications.

Response

The section delineates the requirements for expert opinion statements which include: an identification of the substance; the facts and the opinions to which the expert is expected to testify; the subject matter on which the expert is expected to testify; an identification of the substance of the facts and opinions to which the expert is expected to testify; summary of the grounds of the expert's opinion; and the signature of the expert. However, the section does not include the expert's qualifications. The section was revised to require the position paper to include a brief synopsis of the expert's qualifications or a current curriculum vitae. The expert's qualifications are essential in assessing whether one should consider the witness to be an expert or not.

§ 41.116. Amendments to position papers.

One commentator noted parties should have the right to amend their witness lists for "good cause shown."

Response

As proposed, the section permitted the party to amend its position paper upon good cause shown, but the party would not have been allowed to amend less than 30 days before the hearing. The section was revised to permit amendments less than 30 days before the hearing if the party demonstrates good cause.

§ 41.117. Penalties for noncompliance.

One commentator suggested good cause to permit the testimony of a witness not identified in a party's position paper should include instances such as the death of an identified witness or when an identified witness is no longer employed by the party and another individual functions in that capacity. Another commentator suggested § 41.117(b) should not apply if the party only uses the document solely for impeachment purposes. IRRC recommended there should be a good cause exception to offer testimony as well as documents and § 41.117(a) and (b) should not apply to documents and testimony solely used for impeachment purposes.

Response

The section was revised so that the parties do not need to identify documents or testimony which they are using

for impeachment purposes or for rebuttal testimony. These documents are being used only to challenge or rebut the testimony of a witness and not as part of the party's substantive case.

§ 41.119. General scope of discovery.

IRRC suggested the Department should include specific citations to the relevant Pa.R.C.P. in the regulation.

Response

Section 41.119 was amended to include specific citations to the Pa.R.C.P.

§ 41.120. Limitations on scope of discovery.

One commentator noted there is no basis for a rule that automatically precludes the deposition of the Secretary if he is likely to have knowledge of discoverable information. Also, if a senior department official is likely to have discoverable information, then the senior department official should be obligated to appear for a deposition. Then, the Department would exercise complete control over this discovery process.

Response

The deliberations and policy decisions of the Secretary are protected by the deliberative process privilege. *Commonwealth ex rel. Unified Judicial System v. Vartan*, 557 Pa. 390, 733 A.2d 1258 (1999). Section 41.120(b) codifies that privilege and, under the rulemaking powers granted by Act 142, extends that privilege to encompass inquiries into purely factual matters. Therefore, unless the program office has named the Secretary to be one of its witnesses at the hearing, a provider cannot compel the Secretary to attend a deposition.

The protection afforded the Secretary is appropriate. First, it protects the Secretary's quasi-judicial role as is the ultimate adjudicator in the case on review of the Bureau determination. In addition, lower-ranking Departmental officials are agents of the Secretary and those officials possess knowledge of procedures. Also, the provider could seek to depose the Secretary as a tool to intimidate the Department and to hinder the Secretary from performing other official duties. The same rationale applies to senior Department officials. If senior Department officials were involved in the agency action, there are provisions that will allow those individuals to be deposed.

§ 41.122. Supplementing disclosures and responses.

One commentator and IRRC noted the word "or" should be inserted between "ordered by the Bureau" and "if the party learns."

Response

The section was revised to include the word "or" between "ordered by the Bureau" and "if the party learns."

§ 41.132. Actions on motions.

One commentator suggested this section should be revised to expressly supersede 1 Pa. Code § 35.180(a) (relating to action on motions).

Response

This section provides the Bureau will rule on dispositive motions within 60 days after receiving the moving party's reply to the nonmoving party's response if a reply is filed. If the moving party does not file a reply, the Bureau will rule on the dispositive motion within 60 days after the date on which the nonmoving party's response was due. Also, the Bureau will rule on all other motions

within 30 days after the response is due. The Bureau will decide all prehearing motions within 20 days of the response. Chapter 41 only applies to MA provider appeals under § 41.1 (relating to scope). However, if the Bureau were to fail to rule on a motion within this time period, that failure is not deemed to be either a grant or a denial of the motion.

§ 41.153(a). Burden of proof and production.

One commentator suggested amending the section to place the burden of proof on the Department in cases involving allegations of overpayment, violation of program regulations, imposition of sanctions or penalties and proposed termination of provider agreements. The same commentator suggested adding 2 Pa.C.S. §§ 501—508 and 701—704 to the statutory authority relied upon for these new rules. Two commentators suggested placing the burden of proof on providers in cases inconsistent with Act 142 and the Commonwealth's common law concerning the allocation of the burden of proof. One commentator requested the burden of proof be on the Department when the Department imposes a penalty. One commentator requested the program office should have the burden of proof. IRRC suggested the Department should describe if and when the shift in burden of proof occurs in any case. Three legislators requested amendments to the regulations because the regulations allegedly create a disparity between providers and the Department and the regulations are unfair if the providers always bear the burden of proof. One legislator suggested the party asserting the fact should carry the burden of proof instead of always placing the burden of proof on the MA providers. Several legislators noted that the section should be amended because they don't provide for de novo review for providers.

Response

Act 142 does not require that the burden of proof be borne by either the program office or the provider. Therefore, the Bureau possesses the discretion to allocate the burden of proof through the use of its rulemaking power. *Augelli v. Department of Public Welfare*, 468 A.2d 524, 525 (Pa. Cmwlth 1983). During the period that the SPO has been in effect, the burden of proof was invariably allocated to providers. This facilitated the expeditious resolution of appeals and it has worked well in practice.

Section 41.153(a) sets forth as a general rule that the provider bears the burden of proof on issues raised by it in its appeal. This comports with "the general rule . . . that the burden of proof is upon the party who, in substance, alleges that a thing is so, or, as it is more commonly put, the burden of proof rests upon the party having the affirmative of the issue as determined by the pleadings." *Lincoln Intermediate Unit No. 12 v. Bermudian Springs School District*, 65 Pa. Commw. 53, 441 A.2d 813 (1982). The acts of the Department are presumed to be valid and correct. *Forbes Metropolitan Health System v. Department of Public Welfare*, 558 A.2d 159 (Pa. Cmwlth 1988). In a provider appeal, the provider makes the affirmative assertion, that the contested agency action is invalid or incorrect.

However, after careful consideration of the comments, the section has been revised to reflect that the Department has the burden of proof if the notice of Departmental action asserts that the provider violated either of following provisions: section 1407(a)(1) of the Public Welfare Code (62 P. S. § 1407(a)(1)); or § 1101.75(a)(1) or (2) (relating to provider prohibited acts).

Generally, the laws and regulations administered by the Department do not include an element of scienter and, therefore, those laws and regulations can be enforced through administrative action without consideration of this element. *Girard Prescription Center v Department of Public Welfare*, 496 A.2d 83, 86 (Pa. Cmwlth 1985). Section 41.153(b) identifies the three provisions that are the exception to that general rule. To enforce these provisions through administrative action (as opposed to criminal prosecution or the beginning of a civil law suit), the Department must first make a determination that the provider acted with specific intent. In these instances, the Bureau finds that it is appropriate for the Department to bear the burden of proving that the provider violated the specified provisions. This shift of the burden of proof is consistent with the common law rule that fraud cannot be presumed, but must be proved. Section 41.153 was amended to account for this change in the burden of proof.

It is unnecessary to add specifically 2 Pa.C.S. §§ 501—508 and 701—704 to the statutory authority relied upon for these new rules because the regulation does not state that 2 Pa.C.S. §§ 501—508 and 701—704 is superseded by this regulation. The common law in this Commonwealth requires the application of 2 Pa.C.S. §§ 501—508 and 701—704 in cases involving Commonwealth agencies unless specifically superseded by regulation or statute. In addition, the powers enumerated in Act 142 provide sufficient authority.

§ 41.161(a). Written testimony.

One commentator asked whether this section expressly supersedes 1 Pa. Code § 35.137 (relating to oral examination).

Response

The section specifically supersedes 1 Pa. Code §§ 35.138 and 35.139 (relating to expert witnesses; and fees of witnesses). Section 41.161(a) concerns the admission of the written testimony of a witness, including expert witnesses instead of the witness testifying in person before the Bureau. The regulations do not supersede 1 Pa. Code § 35.137. The regulation at 1 Pa. Code § 35.137 refers to oral examination of a witness at a hearing and provides that “witnesses shall be examined orally unless the testimony is taken by deposition as provided in §§ 35.145—35.152 (relating to depositions) or the facts are stipulated in the manner provided in § 35.112 (relating to conferences to expedite hearings) or in § 35.155 (relating to presentation and effect of stipulations) or the testimony is submitted in prepared written form as provided in § 35.138 (relating to expert witnesses). Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.” This section is in conformance with 1 Pa. Code § 35.137. However, this section adds to the provisions by specifying that a witness should be present for cross-examination or the parties must agree the witness’ presence at the hearing is not required.

§ 41.162(a). Subpoenas.

IRRC asked that this section address the power which Act 142 granted to the Bureau to enforce subpoenas in Commonwealth Court, as specified in 67 Pa.C.S. § 1104(a).

Response

This section was not amended.

§ 41.171. Independence.

One commentator requested the definition of “presiding officer” be amended to indicate whether the appointed individual must be an employee of the Bureau or can be an employee of a program office. IRRC requested the Department explain the consequences resulting from non-compliance if a presiding officer engages in ex parte communication despite prohibition.

Response

The definition of “presiding officer” was added to § 41.3 (relating to definitions). A party who believes the presiding officer engaged in an inappropriate ex parte communication or is not acting in an independent manner from the Department may file a motion with supporting affidavits with the Director requesting the disqualification of the presiding officer from the specific appeal. The Director will review the facts and make an appropriate decision whether disqualification is appropriate.

§ 41.191(b). Determinations and recommendations by the Bureau.

One commentator suggests this section, in conjunction with § 41.5(b), creates a process inconsistent with Act 142 and requests the Department eliminate the section because Act 142 did not authorize a special waiver requests process. IRRC asked that the Department delete language restricting the Bureau’s authority to adjudicate waiver requests presented in a request for hearing, or that the Department provide a justification for this rule.

Response

As previously explained, only the Secretary possesses the power to waive the application of a regulation or other program requirement. Therefore, in the absence of a delegation of that power to the Bureau, the Bureau has no power to do this. When a provider includes a waiver request in its request for hearing, the Bureau’s role is to receive evidence from the parties on the question whether compliance with the program requirement should be waived, and to prepare a recommendation on that issue for the Secretary’s consideration.

§ 41.201. Reopening of record prior to adjudication.

One commentator requests the section be amended to specifically afford a complete remedy when justice requires reopening the record and considering previously unavailable material evidence. IRRC requested the Department explain if parties can file amended pleadings and position papers if the record is reopened.

Response

This section was amended to add an additional subsection. That subsection specifies that, if the Bureau elects to reopen the record, and upon written request or motion to the Bureau or sua sponte by the Bureau, a provider will be afforded the opportunity to file an amendment to its request for hearing and that both parties will be permitted to file amended position papers. If the submittal of amended position papers is allowed, they shall be submitted in the same order as provided for in § 41.112, although the Bureau may alter the timing of the submittals.

§ 41.212(f) and (i). Review of Bureau determinations.

One commentator requested clarification on subsections (f) and (i) as to when a request is deemed denied or approved by virtue of the Secretary's inaction.

Response

If a request for review of the Bureau's determination is not acted upon by the Secretary within 30 days of receipt, then the request to review the determination is denied. If, after requesting the review of a determination, the Secretary grants the request and begins a review process, that review will be completed within 180 days. If the Secretary fails to issue an order before the 180th day, then the review will be deemed denied as against the requestor.

§ 41.213. Review of the Bureau recommendations.

One commentator suggested Act 142 does not empower the Bureau to make recommendations under this section, which allows for differential treatment of waiver requests, as opposed to other types of requests for a hearing.

Response

As previously explained, the Bureau has no jurisdiction to grant or deny a provider's waiver request. Therefore, the most that the Bureau can do is create a record for the Secretary's consideration, and prepare a recommendation regarding the request.

§ 41.214. Appeals.

One commentator noted Act 142 makes the Bureau's determination "binding upon" both parties unless the Secretary reviews the determination. Another commentator requested this section be amended to clearly enumerate the procedural requirements for judicial review.

Response

This section clearly indicates an aggrieved party who wishes to appeal for judicial review of either a final adjudication of the Bureau or the final order of the Secretary should refer to 2 Pa.C.S. Chapter 7 (relating to judicial review). If this section were altered or amended to specify the exact judicial body to which an appeal should be filed, then this section would work to supersede the statute. The statute more clearly specifies the procedural requirements for judicial review and a specification in this section would be redundant and potentially confusing.

Sunset Date

The Department is not establishing a sunset date for the regulations. The Department will continually monitor the regulations for effectiveness.

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on August 4, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 4447, to IRRC and the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.1) and (j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.1) and (j.2)), on October 3,

2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 19, 2006, and approved the final-form rulemaking.

Findings

The Department finds that:

(1) Public notice of proposed rulemaking has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) Adoption of these regulations in the manner provided by THIS Order is necessary and appropriate for the administration and enforcement of 67 Pa.C.S. § 1106.

Order

The Department, acting under 67 Pa.C.S. § 1106, orders that:

(a) The regulations of the Department, 55 Pa. Code, are amended by adding §§ 41.1—41.7, 41.11—41.15, 41.21—41.25, 41.31—41.33, 41.41—41.44, 41.51—41.53, 41.61, 41.71, 41.72, 41.81—41.83, 41.91, 41.92, 41.101, 41.102, 41.111—41.123, 41.131—41.136, 41.141, 41.151—41.153, 41.161, 41.162, 41.171, 41.181, 41.191, 41.201 and 41.211—41.214 to read as set forth in Annex A.

(b) The Secretary shall submit this order and Annex A to the Office of General Counsel and Attorney General for approval as to legality and form as required by law.

(c) The Secretary shall certify and deposit this order and Annex A with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

ESTELLE B. RICHMAN,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 6742 (November 4, 2006).)

Fiscal Note: Fiscal Note 14-488 remains valid for the final adoption of the subject regulations.

Annex A**TITLE 55. PUBLIC WELFARE****PART I. DEPARTMENT OF PUBLIC WELFARE****Subpart D. HEARINGS AND APPEALS****CHAPTER 41. MEDICAL ASSISTANCE PROVIDER
APPEAL PROCEDURES****GENERAL PROVISIONS**

Sec.	
41.1.	Scope.
41.2.	Construction and application.
41.3.	Definitions.
41.4.	Amendments to regulation.
41.5.	Jurisdiction of the Bureau.
41.6.	Timely filing required.
41.7.	Extensions of time.

DOCUMENTARY FILINGS

41.11.	Title of document.
41.12.	Form.
41.13.	Incorporation by reference.
41.14.	Verification.
41.15.	Copies of documents.

SERVICE AND AMENDMENT OF DOCUMENTS

41.21.	Notice of agency actions.
41.22.	Service of pleadings and legal documents.
41.23.	Proof of service.

- 41.24. Certificate of service.
- 41.25. Amendment or withdrawal of legal documents.

REQUESTS FOR HEARING, PETITIONS FOR RELIEF AND OTHER PRELIMINARY MATTERS

- 41.31. Request for hearing.
- 41.32. Timeliness and perfection of requests for hearing.
- 41.33. Appeals nunc pro tunc.

PETITIONS

- 41.41. Waiver request.
- 41.42. Request for declaratory relief.
- 41.43. Request for issuance, amendment or deletion of regulations.
- 41.44. Transfer of petition for relief.

SUPERSEDEAS

- 41.51. General.
- 41.52. Contents of petition for supersedeas.
- 41.53. Circumstances affecting grant or denial.

INTERVENTION

- 41.61. Filing of petitions to intervene.

ANSWERS

- 41.71. Answers generally.
- 41.72. Answers to petitions to intervene.

CONSOLIDATION, AMENDMENT AND WITHDRAWAL OF APPEALS

- 41.81. Consolidation of provider appeals.
- 41.82. Amendments of requests for hearing.
- 41.83. Withdrawal of provider appeals.
- 41.91.

PREHEARING PROCEDURES AND HEARINGS

- Waiver of hearings.
- 41.92. Expedited disposition procedure for certain appeals.

PREHEARING PROCEDURES AND PREHEARING CONFERENCES

- 41.101. Prehearing procedure in certain provider appeals.
- 41.102. Conferences.

DISCLOSURES AND DISCOVERY

- 41.111. Disclosures.
- 41.112. Filing of position paper.
- 41.113. Content of provider position paper.
- 41.114. Content of program office position paper.
- 41.115. Statement regarding expert opinions.
- 41.116. Amendments to position papers.
- 41.117. Penalties for noncompliance.
- 41.118. Authorized forms of discovery.
- 41.119. General scope of discovery.
- 41.120. Limitations on scope of discovery.
- 41.121. Timing and sequence of discovery.
- 41.122. Supplementing disclosures and responses.
- 41.123. Signing of disclosures, discovery requests, responses and objections.

MOTIONS

- 41.131. Motions in general.
- 41.132. Actions on motions.
- 41.133. Procedural motions.
- 41.134. Discovery motions.
- 41.135. Dispositive motions.
- 41.136. Miscellaneous motions.

MEDIATION

- 41.141. Voluntary mediation.

HEARINGS

- 41.151. Initiation of hearings.
- 41.152. Continuance of hearings.
- 41.153. Burden of proof and production.

EVIDENCE AND WITNESSES

- 41.161. Written testimony.
- 41.162. Subpoenas.

PRESIDING OFFICERS

- 41.171. Independence.

POSTHEARING PROCEDURES

- 41.181. Posthearing briefs.

AGENCY ACTION

- 41.191. Determinations and recommendations by the Bureau.

REOPENING OF RECORD

- 41.201. Reopening of record prior to adjudication.

RECONSIDERATION AND REVIEW BY THE SECRETARY

- 41.211. Reconsideration of interlocutory orders.
- 41.212. Review of Bureau determinations.
- 41.213. Review of Bureau recommendations.
- 41.214. Appeals.

GENERAL PROVISIONS

§ 41.1. Scope.

(a) This chapter governs the practice and procedures in MA provider appeals commencing on November 25, 2006, or after the effective date of this chapter.

(b) In addition to this chapter, GRAPP and other applicable Departmental regulations apply to the practice and procedures in MA provider appeals, except as specifically superseded in relevant sections of this chapter.

(c) This chapter does not apply to appeals governed by Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings).

§ 41.2. Construction and application.

(a) This chapter shall be liberally construed to secure the just, speedy and inexpensive determination of provider appeals. At every stage of a provider appeal, the Bureau may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

(b) To the extent that GRAPP applies in MA provider appeals:

(i) The term "agency" as used in 1 Pa. Code Part II means "Bureau."

(ii) The term "participant" as used in 1 Pa. Code Part II means "party."

(iii) The term "presiding officer" as used in 1 Pa. Code Part II means "presiding officer."

§ 41.3. Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Agency action—

(i) An adjudicative action of the Department or a program office that relates to the administration of the MA Program.

(ii) The term includes the actions identified in §§ 1101.84(a)—(c) and 1187.141(a) (relating to provider right of appeal; and nursing facility's right to appeal and to a hearing) and other actions relating to a provider's enrollment in, participation in, claims for payment or damages under or penalties imposed under the MA Program.

*Bureau—*The Bureau of Hearings and Appeals of the Department.

*Department—*The Department of Public Welfare.

Dispositive motion—

(i) A motion that seeks a final determination of one or more of the issues in a provider appeal without the need for hearing or further hearing.

(ii) The term includes the following:

(A) A motion to quash the provider appeal.

(B) A motion to dismiss the provider appeal.

(C) A motion for summary judgment.

(D) A motion for partial summary judgment.

(iii) The term does not include a motion in limine.

GRAPP—The General Rules of Administrative Practice and Procedure set forth in 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

Hearing—One of the following:

- (i) A provider appeal.
- (ii) A proceeding before a presiding officer for the purpose of creating a factual evidentiary record relative to the merits of one or more issues raised in a request for hearing.
- (iii) A proceeding conducted by a presiding officer for the purpose of resolving an interlocutory matter, including, but not limited to, a petition for supersedeas.

Legal document—

(i) A motion, answer, brief, petition to intervene, request for reconsideration of an interlocutory order, request for review by the Secretary or other paper filed with the Bureau in a provider appeal, other than a pleading.

(ii) The term does not include attachments or exhibits.

MA—Medical Assistance.

Pa.R.C.P.—Pennsylvania Rules of Civil Procedure.

Party—A provider, a program office or an intervenor.

Person—An individual, partnership, association, corporation, political subdivision, municipal authority or other entity.

Petition for relief—A document filed under 1 Pa. Code § 35.17, § 35.18 or § 35.19 (relating to petitions generally; petitions for issuance, amendment, waiver or deletion of regulations; and petitions for declaratory orders) of the GRAPP.

Pleading—A request for hearing, including amendments thereto.

Presiding officer—A member of the agency, or one or more trial examiners appointed according to law and designated, to preside at hearings or conferences, or other officers specially provided for and designated under statute to conduct specified classes of proceedings, but not including the agency head when sitting as such.

Program office—

(i) An office within the Department that is managed and operated by an individual who reports directly to the Secretary, including a deputy secretary, or a bureau or other administrative unit of an office within the Department that is managed and operated by an individual who reports directly to a deputy secretary.

(ii) The term does not include the Bureau.

Provider—One of the following:

- (i) A person currently enrolled in the MA Program as a provider of services.
- (ii) A person who has applied for enrollment in the MA Program as a provider of services.
- (iii) A person whose enrollment in the MA Program as a provider of services has been suspended or terminated by the Department.

Provider appeal—A proceeding to obtain review of an agency action that is commenced by a provider by filing a request for hearing.

Request for hearing—The pleading filed by a provider in order to commence a provider appeal.

Secretary—The Secretary of Public Welfare.

Senior Department official—the Comptroller, the Chief Counsel of the Department, a nonclerical individual who works in the office of the Secretary or who reports directly to the Secretary, including a deputy secretary, or a director of a bureau within a program office.

Supersedeas—An order suspending the effect of an agency action pending the Bureau's determination in a provider appeal.

Waiver request—A request that the Secretary waive the application of a provision set forth in a Department regulation.

(b) The definition of "pleading" in subsection (a) supersedes the definition of "pleading" in 1 Pa. Code § 31.3 (relating to definitions of pleading).

§ 41.4. Amendments to regulation.

(a) The Department retains continuing jurisdiction under 67 Pa.C.S. § 1106 (relating to regulations) to adopt and amend regulations establishing practice and procedure as may be necessary to govern provider appeals.

(b) The Bureau may establish forms as may be required to implement this chapter.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.6 (relating to amendments to rules).

§ 41.5. Jurisdiction of the Bureau.

(a) Except as provided in subsections (b)–(d), the Bureau has exclusive original jurisdiction over provider appeals.

(b) The Bureau has no jurisdiction to make a final determination on a waiver request included in a request for hearing. The Bureau will create a record and make a recommendation to the Secretary regarding the waiver request as specified in § 41.191(b) (relating to determinations and recommendations by the Bureau).

(c) The Bureau has no jurisdiction to issue a final determination on the merits of an issue properly raised in a petition for relief.

(d) The Bureau's jurisdiction in provider appeals is subject to §§ 41.211 and 41.212 (relating to reconsideration of interlocutory orders; and review of Bureau determinations).

(e) The Bureau has no jurisdiction in a provider appeal involving an agency action if Federal law or Federal regulations require the aggrieved provider to use Federal appeal procedures in order to contest the agency action.

(f) Subsections (a)–(e) supersede 1 Pa. Code § 35.103 (relating to preliminary notice to Department of Justice).

§ 41.6. Timely filing required.

(a) Pleadings and legal documents required or permitted to be filed under this chapter, the regulations of the Department or another provision of law must be received for filing at the Bureau within the time limits permitted for the filing.

(b) Except as provided in § 41.32(b) (relating to timeliness and perfection of requests for hearing), the filing date is the date of receipt by the Bureau, and not the date of mailing.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.11 (relating to timely filing required).

§ 41.7. Extensions of time.

(a) Except when necessitated by the circumstances of the Bureau, no order or prehearing order will continue a provider appeal or extend the time for doing an act

required by this chapter except upon written motion by a party filed in accordance with this chapter.

(b) When this chapter establishes a standard for an extension of time, a motion seeking an extension shall be resolved by the application of that standard. If this chapter does not otherwise establish a standard, the motion shall be resolved by the application of 1 Pa. Code § 31.15 (relating to extensions of time).

DOCUMENTARY FILINGS

§ 41.11. Title of document.

(a) Legal documents in a provider appeal commenced by a request for hearing, other than the initial pleading, shall display a caption at the top of the first page in the following form:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
BUREAU OF HEARINGS AND APPEALS
[Name of Provider] v. [Name of Program Office]
BHA I.D. No.:
Docket No.:
[Descriptive Title of Document]

(b) The descriptive title of a legal document must identify the party on whose behalf the filing is made.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 33.1 (relating to title).

§ 41.12. Form.

(a) Printed documents may not be less than 12-point font.

(b) An original hard copy of a pleading bearing an original signature must be filed with the Bureau by personal delivery or first-class mail.

(c) A legal document may be filed with the Bureau in hard copy by first-class mail or personal delivery.

(d) A legal document may be filed by facsimile if the document does not exceed 20 pages in length, including attachments and exhibits. An executed hard copy of a document filed by facsimile shall be maintained by the filing party and produced at the request of the Bureau or other party.

(e) Subsection (a) supersedes 1 Pa. Code § 33.2(b) (relating to form) as it relates to font size of printed documents.

§ 41.13. Incorporation by reference.

(a) A legal document on file with the Bureau in a provider appeal, and the exhibits or attachments thereto, may be incorporated by reference into another legal document that is subsequently filed in the same provider appeal.

(b) A document may be incorporated by reference to the specific document and prior filing in which it was physically filed, but not by reference to another document that incorporates it by reference.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 33.3 (relating to incorporation by reference).

§ 41.14. Verification.

(a) A pleading or legal document that contains an averment of fact not appearing of record or that contains a denial of fact must be verified as specified in subsection (b).

(b) A verification of a pleading or legal document must substantially conform to the following:

I, (name of person signing verification), in my capacity as (title or statement describing relationship to the party submitting the document), hereby state that I am authorized to make this verification on behalf of (party submitting the document) and that the facts set forth in the (document being verified) filed in this matter are true and correct to the best of my knowledge, information, and belief, and that this verification is being made subject to 18 Pa.C.S. § 4904, (relating to unsworn falsification to authorities.)

(c) Subsections (a) and (b) supersede 1 Pa. Code § 33.12 (relating to verification).

§ 41.15. Copies of documents.

(a) Unless otherwise ordered by the Bureau, only the original of a pleading or a legal document shall be filed with the Bureau.

(b) One copy of a pleading or legal document filed with the Bureau will be served on each of the other parties to the provider appeal unless otherwise specified in this chapter.

(c) A document filed with the Bureau in a provider appeal is available for inspection and copying except that, if a document contains information protected by law against public disclosure, the document will not be available until the protected information has been redacted. When redaction is required, the person seeking access to or a copy of the document shall be required to pay the actual cost of redaction prior to the document being made available.

(d) Documents in the files of the Bureau may not be removed from the Bureau's custody. At the discretion of the Bureau, a person provided with access to a document under subsection (c) may make a copy using equipment available at the Bureau, or the Bureau may make a copy and provide it to the person requesting access. The rates for copies will be identical to the rates charged by the Department under the Right-to-Know Law (65 P.S. §§ 66.1—66.4).

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 33.15, 33.21, 33.22, 33.23 and 33.37.

SERVICE AND AMENDMENT OF DOCUMENTS

§ 41.21. Notice of agency actions.

(a) In the absence of a Department regulation specifying the method in which notice of an agency action is given, the Department or a program office may give notice of an agency action by one of the following methods:

(1) Mailing a written notice of the action to a provider at the provider's most recent business address on file with the Department.

(2) Serving notice of the action in the manner provided in Pa.R.C.P. Nos. 400—441.

(3) By publication in the *Pennsylvania Bulletin* if the agency action applies to a class of providers or makes system-wide changes affecting more than a single provider.

(b) In the absence of a Department regulation specifying the content of a notice of an agency action, notice of an agency action must include the following:

(1) The effective date of the agency action.

(2) The basis for the agency action.

(3) The date the notice was deposited in the mail or otherwise served on the provider.

§ 41.22. Service of pleadings and legal documents.

Service of pleadings and legal documents must be made on the same day the pleading or legal document is filed with the Bureau as follows:

(1) Pleading. The provider that files a pleading shall serve a copy on:

(i) The program office that initiated the agency action in dispute.

(ii) The Department's Office of General Counsel.

(2) *Petition for supersedeas*. The provider that files a petition for supersedeas shall serve a copy of the petition on:

(i) The program office that initiated the agency action in dispute.

(ii) The Department's Chief Counsel.

(3) *Legal document*. The party that files a legal document in a provider appeal shall serve a copy of the document on each other party to the appeal.

(4) *Method of service*.

(i) Service must be made by delivering in person or by mailing, properly addressed with postage prepaid, one copy of the pleading or legal document.

(ii) When a legal document is filed by facsimile, service must be made by facsimile in addition to the method set forth in subparagraph (i).

§ 41.23. Proof of service.

(a) A certificate of service in the form prescribed in § 41.24 (relating to certificate of service) must accompany and be attached to a pleading or legal document filed with the Bureau.

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.31, 33.32, 33.35 and 33.36.

§ 41.24. Certificate of service.

(a) Each certificate of service must substantially conform to the following:

I hereby certify that I have this day served the foregoing document upon: (Identify name and address of each person served) by (Indicate method of service).

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.31, 33.32, 33.35 and 33.36.

§ 41.25. Amendment or withdrawal of legal documents.

(a) A party may amend a legal document, other than a position paper, by filing an amendment with the Bureau unless the Bureau otherwise orders.

(1) An amendment to a legal document will be deemed filed as of the date of receipt by the Bureau, unless the Bureau otherwise orders.

(2) A position paper may be amended as specified in § 41.116 (relating to amendments to position papers).

(b) A party may withdraw a legal document by filing a motion for leave to withdraw the document. The motion will be granted or denied by the Bureau as a matter of discretion.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 33.41, 33.42 and 33.51 (relating to amendments; withdrawal or termination; and docket).

REQUESTS FOR HEARING, PETITIONS FOR RELIEF AND OTHER PRELIMINARY MATTERS

§ 41.31. Request for hearing.

(a) A provider that is aggrieved by an agency action may appeal and obtain review of that action by the Bureau by filing a request for hearing in accordance with this chapter.

(b) A provider is aggrieved by an agency action if the action adversely affects the personal or property rights, privileges, immunities, duties, liabilities or obligations of the provider.

(c) When a provider files a request for hearing to contest an agency action, the program office that issued the notice of the agency action is a party to the provider appeal.

(d) A request for hearing must include the following:

(1) The name, address and telephone number of the provider.

(2) Detailed reasons why the provider believes the agency action is factually or legally erroneous.

(3) Identification of the specific issues that the provider will raise in its provider appeal.

(4) Specification of the relief that the provider is seeking.

(i) If the provider is challenging the validity of a regulation or statement of policy in its provider appeal, the provider shall state the challenge expressly and with particularity and identify the regulation or statement of policy involved.

(ii) If the provider is seeking relief from an agency action, in whole or in part, through waiver of the application of a regulation, the provider shall state its waiver request expressly and with particularity and identify the regulation involved.

(iii) A provider may not request a declaratory order or an order that the Department should be required to promulgate, amend or repeal a regulation as relief in a request for hearing. The requests shall be set forth in a petition for relief in accordance with 1 Pa. Code § 35.18 and 35.19 (relating to petitions for issuance, amendment, waiver or deletion of regulations; and petitions for declaratory orders).

(e) If the provider received written notice of the agency action by mail or personal service, the provider shall attach to the request for hearing a copy of the transmittal letter forwarding the written notice and the first page of the written notice, or, if there is no transmittal letter, a copy of the entire written notice. If the provider received written notice of the agency action by publication in the *Pennsylvania Bulletin*, the provider shall identify the date, volume and page number of the *Pennsylvania Bulletin* in the request for hearing.

(f) Subsections (a)–(e) supersede 1 Pa. Code §§ 35.1, 35.2, 35.5–35.7, 35.9–35.11 and 35.20 (relating to appeals from actions of the staff).

§ 41.32. Timeliness and perfection of requests for hearing.

(a) Except as permitted in § 41.33 (relating to appeals nunc pro tunc), the Bureau lacks jurisdiction to hear a

request for hearing unless the request for hearing is in writing and is filed with the Bureau in a timely manner, as follows:

(1) If the program office gives notice of an agency action by mailing the notice to the provider, the provider shall file its request for hearing with the Bureau within 33 days of the date of the written notice of the agency action.

(2) If written notice of an agency action is given in a manner other than by mailing the notice to the provider, a provider shall file its request for hearing with the Bureau within 30 days of the date of the written notice of the agency action.

(b) If a provider files a request for hearing by first-class mail, the United States postmark appearing upon the envelope in which the request for hearing was mailed shall be considered the filing date of that request for hearing. If the provider files a request for hearing in another manner, or if the envelope in which the provider's request for hearing was mailed bears a postmark other than a United States postmark, the date the request for hearing is received in the Bureau will be considered the filing date.

(c) Except as permitted in § 41.33(b), a request for hearing may be amended only as follows:

(1) A provider may amend a request for hearing as a matter of right within 90 days of the filing date of the request for hearing.

(2) Upon motion of the provider or in response to a rule or order to show cause issued under subsection (f). The Bureau may permit a provider to amend a request for hearing more than 90 days after the filing of a request for hearing if the provider establishes either of the following:

(i) The amendment is necessary because of fraud or breakdown in the administrative process.

(ii) Both of the following conditions are met:

(A) The amendment is based upon additional information acquired after the expiration of the 90-day period that contradicts information previously disclosed by the Department or provides entirely new information not previously disclosed by the Department.

(B) The program office and other parties to the appeal will not be prejudiced if the amendment is allowed.

(d) A legal or factual objection or issue not raised in either a request for hearing filed within the time prescribed in subsection (a) or in an amended request for hearing filed under subsection (c) shall be deemed waived. A general objection to an agency action shall be deemed a failure to object and constitute a waiver of the objections and issues relating to an action.

(e) The Bureau will dismiss a request for hearing, either on its own motion or on motion of a program office, if a provider fails to file its request in accordance with the time limits specified in subsection (a).

(f) The Bureau will dismiss a request for hearing on its own motion or a motion of the program office if the following conditions are met:

(1) The provider's request for a hearing fails to conform to the requirements of § 41.31(d)—(e) (relating to request for hearing).

(2) The 90-day time period for amendments specified in subsection (c)(1) has expired.

(3) The provider fails to establish that an amendment should be permitted under subsection (c)(2).

(g) If the dismissal is based upon motion of the Bureau, the Bureau will issue a rule or order to show cause, with a date certain listed therein, and serve that rule or order to show cause upon the parties to the appeal.

(h) Subsections (a)—(g) supersede 1 Pa. Code §§ 35.1, 35.2, 35.5—35.7, 35.9—35.11, 35.105 and 35.106.

§ 41.33. Appeals nunc pro tunc.

(a) The Bureau, upon written motion and for good cause shown, may grant leave to a provider to file a request for hearing nunc pro tunc under the common law standard applicable in analogous cases in courts of original jurisdiction.

(b) The Bureau, upon written motion and for good cause shown, may grant leave to a provider to file an amendment to a request for hearing nunc pro tunc under the common law standard applicable in analogous cases in courts of original jurisdiction.

(c) The Secretary, upon written motion and for good cause shown, may grant leave to a party to file a request for review of a Bureau determination by the Secretary nunc pro tunc under the common law standard applicable in analogous cases in courts of original jurisdiction.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.1, 35.2, 35.5—35.7 and 35.9—35.11 and, to the extent that they would otherwise apply to the time for filing appeals with the Bureau, §§ 1187.1(d) and 6210.14(b) (relating to policy; and time extensions).

PETITIONS

§ 41.41. Waiver request.

(a) A provider may include a waiver request in a petition for relief only if the regulation that is the subject of the waiver request is not a basis for an agency action involving the provider.

(b) If an agency action involving the provider depends, in whole or in part, upon the application of a regulation of the Department, a provider aggrieved by that agency action may only present a waiver request pertaining to that regulation in the context of a request for hearing filed in accordance with § 41.31 (relating to request for hearing).

(c) To the extent that the waiver sought by a provider in a petition for relief has been or could have been included in a request for hearing, the Bureau will dismiss the petition for relief.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.18 (relating to petitions for issuance, amendment, waiver or deletion of regulations) to the extent that an appealable agency action is involved.

§ 41.42. Request for declaratory relief.

(a) A provider may include a request for declaratory relief in a petition for relief only if the relief sought by the provider would not modify or alter an agency action involving the provider.

(b) If the requested relief would modify an agency action involving the provider, the provider may only seek the relief in the context of a request for hearing filed in accordance with § 41.31 (relating to request for hearing).

(c) To the extent that a request for declaratory relief sought by a provider in a petition for relief has been or could have been included in a request for hearing, the Bureau will dismiss the petition for relief.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.19 (relating to petitions for declaratory orders) to the extent that an appealable agency action is involved.

§ 41.43. Request for issuance, amendment or deletion of regulations.

The sole means by which a provider may formally petition the Department for the issuance, amendment or deletion of a regulation or statement of policy is by filing a petition for relief under 1 Pa. Code § 35.18 (relating to petitions for issuance, amendment, waiver or deletion of regulations).

§ 41.44. Transfer of petition for relief.

(a) If a provider filed a petition for relief prior to the date of an agency action in which it has sought relief in connection with or relating to that agency action, the provider may file a motion to have the petition for relief transferred to the Bureau and deemed a request for hearing. The motion shall be filed within the time allowed for the filing of a request for a hearing specified in § 41.32(a) (relating to timeliness and perfection of requests for hearing).

(b) Subsection (a) supersedes 1 Pa. Code § 35.17 (relating to petitions generally) to the extent that an appealable agency action is involved.

SUPERSEDEAS

§ 41.51. General.

(a) The filing of a request for hearing does not act as an automatic supersedeas. However, a provider who has filed a request for hearing may petition the Bureau to grant a supersedeas of the agency action. The Bureau may, upon good cause shown, grant a provider's petition for supersedeas in accordance with § 41.53 (relating to circumstances affecting grant or denial).

(b) A petition for supersedeas must be set forth in writing and may be filed during a provider appeal.

(c) The Bureau will not issue a supersedeas without first conducting a hearing, but a hearing may be limited under subsection (e). The Bureau, upon motion or sua sponte, may direct that a prehearing conference be held before scheduling or holding a hearing on a supersedeas.

(d) A hearing on a supersedeas, if necessary, will be held expeditiously, if feasible within 2 weeks of the filing of the petition. In scheduling the hearing the Bureau will take into account the availability of the presiding officer and program office staff and the urgency and seriousness of the problem to which the order or action of the Department applies. If good cause is shown, the hearing will be held as soon as possible after the filing of the petition.

(e) If necessary to ensure prompt disposition, and at the discretion of the Bureau, a supersedeas hearing may be limited in time and format, with parties given a fixed amount of time to present their entire case, and with restricted rights of discovery or of cross-examination.

(f) The Bureau may impose costs or other appropriate sanctions on a party that files a petition for supersedeas in bad faith or on frivolous grounds.

§ 41.52. Contents of petition for supersedeas.

(a) A petition for supersedeas must plead facts with particularity and be supported by one of the following:

(1) Affidavits prepared as specified in Pa.R.C.P. Nos. 76 and 1035.4 (relating to definitions; and motion for summary judgment), setting forth facts upon which issuance of the supersedeas may depend.

(2) An explanation of why affidavits have not accompanied the petition if no supporting affidavit is submitted with the petition for supersedeas.

(b) A petition for supersedeas must state with particularity the citations of legal authority the petitioner believes form the basis for the grant of supersedeas.

(c) A petition for supersedeas may be denied upon motion made before a supersedeas hearing or during the proceedings, or sua sponte, without hearing, for one of the following reasons:

(1) Lack of particularity of the facts pleaded.

(2) Lack of particularity or inapplicability of the legal authority cited as the basis for the grant of the supersedeas.

(3) An inadequately explained failure to support factual allegations by affidavit.

(4) A failure to state grounds sufficient for the granting of a supersedeas.

§ 41.53. Circumstances affecting grant or denial.

(a) The Bureau, in granting or denying a supersedeas, will be guided by relevant judicial precedent. Factors to be considered include the following:

(1) Irreparable harm to the provider.

(2) The likelihood of the provider prevailing on the merits.

(3) The likelihood of injury to the public or other parties.

(b) A supersedeas will not be issued if injury to the public health, safety or welfare exists or is threatened during the period when the supersedeas would be in effect. If State law or Federal law or regulation requires that an action take effect prior to the final determination of an appeal, injury to the public health, safety or welfare shall be deemed to exist.

(c) In granting a supersedeas, the Bureau may impose conditions that are warranted by the circumstances, including the filing of a bond or the posting or provision of other security.

INTERVENTION

§ 41.61. Filing of petitions to intervene.

(a) Petitions to intervene and notices of intervention in a provider appeal may be filed following the filing of a request for hearing but in no event later than 60 days from the filing date on the provider's request for hearing, unless for extraordinary circumstances and for good cause shown, the Bureau authorizes a late filing.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.23, 35.24 and 35.39—35.41.

ANSWERS

§ 41.71. Answers generally.

(a) An answer to a pleading is not required.

(b) Answers to legal documents, if permitted or required by this chapter, must be filed with the Bureau within 20 days after the date of service of the legal document, unless either of the following occurs:

(1) A different period is specifically required in this chapter.

(2) For cause, the Bureau with or without motion prescribes a different time, but in no case may an answer be required in less than 10 days after the date of service.

(c) Answers must be in writing and conform to the requirements of this chapter. Answers must admit or deny in detail each material fact asserted in the legal document answered and state clearly and concisely the facts and law relied upon.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.35 (relating to answers to complaints and petitions).

§ 41.72. Answers to petitions to intervene.

(a) A party may file an answer to a petition to intervene, and in default thereof, may be deemed to have waived an objection to the granting of the petition.

(b) Answers shall be filed within 20 days after the date of service of the petition, unless for cause the Bureau with or without motion prescribes a different time.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.36 (relating to answers to petitions to intervene).

**CONSOLIDATION, AMENDMENT AND
WITHDRAWAL OF APPEALS**

§ 41.81. Consolidation of provider appeals.

(a) Each provider that wishes to appeal an agency action shall file an individual request for hearing in its own name, without joining another provider.

(b) The Bureau, on timely motion, may order that a provider appeal be consolidated with one or more other provider appeals if the Bureau determines that the provider appeals in question involve substantially similar or materially related issues of law or fact and that consolidation is otherwise appropriate.

(c) Consolidation is appropriate if it will not prejudice the ability of the nonmoving party to perform adequate discovery or to adequately present its claim or defense, and if it will not unduly delay the adjudication of the earlier-filed matter.

(d) A provider appeal will not be consolidated except upon motion filed by one or more parties.

(e) In addition to the general requirements for motions in §§ 41.131—41.136 (relating to motions), a motion for consolidation must include the following:

(1) Identification of the issues of law raised in each provider appeal and the extent to which each is shared or distinct.

(2) Identification of the material facts that serve as a basis for each appeal and the extent to which each of these facts is shared or distinct.

(3) Justification or advantages to support consolidation.

(f) In addition to the general requirements for answers to motions in § 41.72 (relating to answers to petitions to intervene), an answer to a motion for consolidation must explain how consolidation would, if allowed, adversely affect the nonmoving party's ability to conduct and complete discovery, or its ability to present its claims or defenses.

(g) A motion to consolidate will be considered untimely as to a provider appeal if it is filed after the date set for the conclusion of discovery in that provider appeal. An untimely motion to consolidate will only be granted with the consent of the nonmoving parties.

(h) If a provider seeks to consolidate its provider appeal with a provider appeal filed by a different pro-

vider, the motion for consolidation shall be deemed to be opposed by the other provider unless an affirmative statement to the contrary is set forth in the motion.

(i) A motion for consolidation and an answer thereto must be served on each person that is a party to the other provider appeals for which consolidation is sought.

(j) If the Bureau grants a provider's motion to consolidate, the discovery available to the providers in the consolidated appeals must, in the aggregate, comply with the limitations specified in § 41.120 (relating to limitations on scope of discovery).

(k) Subsections (a)—(j) supersede 1 Pa. Code §§ 35.45 and 35.122 (relating to consolidation; and consolidation of formal hearings).

§ 41.82. Amendments of requests for hearing.

(a) Amendments to a request for hearing will not be permitted except as specified in §§ 41.32(c) and 41.33(b) (relating to timeliness and perfection of requests for hearing; and appeals nunc pro tunc).

(b) Subsection (a) supersedes 1 Pa. Code § 35.48—35.50 (relating to amendments of pleading generally; amendments to conform to the evidence; and directed amendments).

§ 41.83. Withdrawal of provider appeals.

(a) A provider may withdraw or end its provider appeal prior to adjudication by one of the following:

(1) The provider notifies the Bureau in writing that it is withdrawing its provider appeal.

(2) The parties to a provider appeal sign a written stipulation of settlement in which the provider agrees to withdraw the provider appeal.

(b) When a provider appeal is withdrawn prior to adjudication, the withdrawal shall be with prejudice, except that the appeal may be reopened if, on motion of the provider, the Bureau finds that the withdrawal of the appeal was reasonable and not done for dilatory or vexatious purposes, that the program office will not be prejudiced by the reopening, and that good cause exists for permitting the appeal to be re-opened.

(c) Unless the written notice or stipulation of settlement provides otherwise, a withdrawal of a provider appeal under this section shall be effective on the date the written notice or stipulation of settlement is received by the Bureau.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.51 (relating to withdrawal of pleadings).

PREHEARING PROCEDURES AND HEARINGS

§ 41.91. Waiver of hearings.

A hearing need not be held if one of the following occurs:

(1) The provider waives its right to hearing.

(2) The parties stipulate to the material facts or agree to submit direct and rebuttal testimony or documentary evidence in affidavit form (sworn or affirmed on personal knowledge) or by deposition.

(3) The Bureau determines that there are no material facts in dispute.

(4) Subsections (a)—(c) supersede 1 Pa. Code § 35.101 (relating to waiver of hearing).

§ 41.92. Expedited disposition procedure for certain appeals.

(a) This section applies to provider appeals involving the denial of claims for payment through the prior authorization process, the denial of requests for precertification, the recovery of overpayments or improper payments through the utilization review process, the denial of claims upon prepayment review, the denial of claims for payment under § 1101.68 (relating to invoicing for services), the denial, termination or suspension of an exceptional DME grant as defined in § 1187.2 (relating to definitions) and the denial of a program exception request filed under § 1150.63 (relating to waivers).

(b) A request for hearing in a provider appeal subject to this section shall be submitted in writing to the Bureau within the time limits specified in accordance with § 41.32(a) (relating to timeliness and perfection of requests for hearing) and include both of the following:

(1) The information specified in § 41.31(d) (relating to request for hearing).

(2) Relevant supporting documentation.

(c) The provider shall send a copy of its request for hearing to the program office issuing the notice of the agency action at the same time it files its request with the Bureau.

(d) Unless the information has already been exchanged, each party shall give to the other parties a document that it will introduce as an exhibit and a list of the persons, including medical or other experts, which it will call as a witness at the hearing.

(e) The Bureau will promptly schedule a hearing taking into due consideration the availability of expert witnesses. The Bureau will provide at least 3 weeks notice of a hearing from the date of notice.

(f) The following sections of this chapter do not apply to appeals subject to this section:

(1) Section 41.11 (relating to title of document).

(2) Section 41.12 (relating to form).

(3) Section 41.14 (relating to verification).

(4) Section 41.22(1)(ii) (relating to service of pleadings and legal documents).

(5) Section 41.23 (relating to proof of service).

(6) Section 41.24 (relating to certificate of service).

(7) Section 41.101 (relating to prehearing procedure in certain provider appeals).

(8) Sections 41.111—41.123.

(9) Section 41.134 (relating to discovery motions).

(10) Section 41.135 (relating to dispositive motions), except for a motion to dismiss based upon timeliness.

(11) Section 41.141 (relating to voluntary mediation).

(12) Section 41.151 (relating to initiation of hearings).

(13) Section 41.181 (relating to posthearing briefs).

(g) Upon motion of a party, and for good cause shown, the Bureau may order that a provider appeal identified in subsection (a) be exempt from this section or may order that one or more of the sections identified in subsection (f) apply in whole or in part to the appeal. In the case of a motion seeking an order to apply §§ 41.111—41.121 to a provider appeal identified in subsection (a), in order to show good cause, the moving party shall establish that the disclosures or discovery will not prevent the prompt

and efficient adjudication of the appeal and are reasonable and necessary given the facts involved in the appeal.

(h) Upon joint motion of the parties to a provider appeal, the Bureau may order that this section applies to a provider appeal not identified in subsection (a).

(i) A motion to exempt an appeal from this section under subsection (g) and a joint motion to apply this section to an appeal under subsection (h) may be filed with the request for hearing, but shall be filed no later than 30 days from the filing date of the request for hearing in the provider appeal.

PREHEARING PROCEDURES AND PREHEARING CONFERENCES

§ 41.101. Prehearing procedure in certain provider appeals.

(a) Upon the filing of a request for hearing, the Bureau will issue a prehearing order specifying the following:

(1) The parties shall make disclosures in accordance with §§ 41.111—41.117.

(2) Discovery requests must be served within 90 days of the date of the prehearing order and discovery must be concluded within 120 days of the date of the prehearing order.

(3) Motions to compel discovery shall be filed within 30 days of the close of discovery.

(4) Other miscellaneous prehearing motions, including motions in limine, shall be filed within 60 days of the date of filing of the program office's position paper.

(5) Dispositive motions shall be filed within 60 days of the date of the filing of the program office's position paper.

(b) The parties may, within 30 days of the date of the prehearing order, submit a joint proposed case management order to the Bureau that proposes alternative dates for completion of the matters specified in subsection (a), or that agrees to discovery beyond the limitations set forth in § 41.120 (relating to limitations on discovery).

(c) The Bureau may issue subsequent prehearing orders incorporating the alternate dates and discovery limitations proposed by the parties or specifying other dates and discovery limitations that the Bureau deems appropriate, except that the Bureau will not establish dates or impose limitations that are more restrictive than the dates or limitations otherwise provided for in this chapter without the agreement of each party to the appeal.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.111 (relating to conferences to adjust, settle or expedite proceedings).

§ 41.102. Conferences.

(a) The Bureau, on its own motion or on motion of a party, may hold a conference either prior to or during a hearing for the purpose of facilitating settlement, adjustment of the proceeding or another issue therein, or other matters to expedite the orderly conduct and disposition of a hearing.

(b) A stipulation of the parties or order of the Bureau as a result of the conference shall be binding upon the parties.

DISCLOSURES AND DISCOVERY

§ 41.111. Disclosures.

(a) A party to a provider appeal commenced by a request for hearing shall, without awaiting a discovery request, disclose information to each other party as specified in this section.

(b) The program office will disclose the following:

(1) The name, title, business address and telephone number of each staff person directly involved in the agency action, and, if different, the name, title, business address and telephone number of the officials or staff designated to testify on its behalf regarding the agency action and the issues on which the designated individual will testify. In the case of an audit appeal, the program office will, at a minimum, identify every auditor involved in the audit and every audit supervisor and audit manager who reviewed the audit report.

(2) A copy of, or a description by category and location of, the documents, data compilations and tangible things, not privileged or protected from disclosure, that were relied upon in issuing the agency action, or that formed the basis for the agency action.

(c) The provider shall disclose the following:

(1) The name, title, business address and telephone number of each person who provided facts, opinions or other information that were relied upon in drafting the request for hearing or petition for supersedeas or that support or form the basis for, the allegations contained therein; and, if different, the name, title, business address and telephone number of the officials or staff designated to testify on its behalf regarding the agency action and the issues on which the designated person will testify.

(2) A copy of, or a description by category and location of, the documents, data compilations and tangible things, not privileged or protected from disclosure, that were relied upon in drafting the request for hearing or petition for supersedeas or that support or form the basis for, the allegations contained therein. In a case when a provider alleges in its request for hearing that its costs or its claim for payment is supported by documents, the provider shall disclose the supporting documents.

(d) The parties shall make their initial mandatory disclosures within 45 days of the date of the Bureau's initial prehearing order, unless a different time is set by stipulation of the parties or by the prehearing order of the Bureau.

(e) A party shall make its initial disclosures based on the information in its possession or otherwise then reasonably available to it. A party will not be excused from making its disclosures because it has not fully completed its investigation of the case, because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(f) An opposing party is not obligated to respond to a discovery request made under §§ 41.118–41.121 until the party that propounded the request has made its mandatory initial disclosures in compliance with this section.

§ 41.112. Filing of position paper.

(a) The provider shall file its position paper and required documentation with the Bureau and serve it on the program office within 60 days of the close of discovery or another date as may be specified in the Bureau's prehearing order. If the provider fails to meet the position paper due date or fails to supply the Bureau with the

required documentation, the Bureau will dismiss the provider's appeal, unless the provider shows good cause for its noncompliance.

(b) The program office will file its position paper and required documentation with the Bureau and serve it on the provider within 60 days of the date of service of the provider's position paper or another date as may be specified in the Bureau's prehearing order. If the program office fails to meet the position paper due date, the Bureau will bar it from presenting evidence and witnesses at the hearing, unless the program office shows good cause for its noncompliance.

(c) The Bureau disfavors requests for extensions of time to file position papers. The Bureau may grant an extension if the following conditions are met:

(1) A party submits a written request for extension.

(2) The request is received by the Bureau in time for it to review the matter prior to the due date.

(3) The party establishes that good cause exists to warrant an extension.

(d) Failure to complete discovery before the due date of the position paper will ordinarily not be considered sufficient cause to extend the deadline, unless the failure is due to the noncooperation of the other side. A request for extension should be considered denied unless the Bureau affirmatively grants the extension in writing before the papers are due.

§ 41.113. Content of provider position paper.

(a) For each issue identified in its request for hearing or amended request for hearing, the provider's position paper must state the relevant facts and present arguments setting forth the provider position.

(b) For each issue identified in its request for hearing or amended request for hearing, the provider shall include the following:

(1) A summary of the pertinent facts and circumstances.

(2) Citations to the relevant statutory provisions, regulations and other controlling authorities.

(3) The monetary amount in dispute only if the sum is certain in whole or in part as of the date the position paper is due. If the sum in dispute is not certain as of the date the position paper is due, the party is required to identify the regulation that is applicable to determining such sum and a supporting affidavit for the reason the sum could not be determined.

(4) An explanation showing how the monetary amount was computed.

(5) Other relief sought by the provider in connection with the issue.

(6) The name and business address of every witness whose testimony the provider will present.

(7) A copy of every document that the provider will offer into evidence to support its position with respect to the issue.

(8) This section supersedes 1 Pa. Code §§ 35.164 and 35.165 (relating to documents on file with agency; and public documents).

§ 41.114. Content of program office position paper.

(a) For each issue identified in the provider's position paper, the program office's position paper will state whether it accepts or disputes the provider's statements regarding the following:

- (1) Summary of the pertinent facts and circumstances.
- (2) Citations to the relevant statutory provisions, regulations and other controlling authorities.

- (3) Computation of the monetary amount in dispute.

(b) If the program office disputes the facts, citations or monetary amount, it will provide a counterstatement of the items in dispute if the information has not already been published in the *Pennsylvania Bulletin*.

(c) The program office's position paper will identify those additional issues not addressed by the provider that it believes should be determined by the Bureau.

(d) For each disputed issue, the program office will include a summary of the pertinent facts, circumstances and citations to the relevant statutory provisions, regulations and other controlling authorities.

(e) The program office will provide the name and business address of every witness whose testimony it will present and a copy of every document that it will offer into evidence to support its position on each issue identified in its position paper.

(f) On those occasions when the Department bears the burden of proof under § 41.153(b) (relating to burden of proof and production), the program office will file an initial position paper. That position paper will conform to § 41.113 (relating to content of provider position paper), except § 41.113(b)(3)—(5). If the program office fails to timely file its initial position paper and required documentation with the Bureau, the Bureau will affirm the provider's appeal as to those issues on which the program office bears the burden of proof, unless the program office shows good cause for its noncompliance. Once that program office's initial position paper has been filed, the provider shall file its position paper, which shall address all issues raised in the provider's request for hearing, including those on which it bears the burden of proof. Thereafter, the program office will file another position paper, which will address any issues on which the provider bears the burden of proof. The deadlines for filing these position papers will be set by order of the Bureau.

(g) This section supersedes 1 Pa. Code §§ 35.164 and 35.165 (relating to documents on file with agency; and public documents).

§ 41.115. Statement regarding expert opinions.

(a) For each issue in dispute, a party's position paper must address the party's reliance upon an expert. The party shall state whether its position depends, in whole or in part, upon the judgment, opinion or testimony of a person who, if called to testify, would be called as an expert.

(b) When a party's position depends, at least in part, upon the judgment, opinion or testimony of an expert, the party's position paper must include a "statement of expert opinion."

(c) Consistent with Pa.R.C.P. No. 4003.5 (relating to discovery of expert testimony, trial preparation material), and unless the Bureau orders to the contrary, each expert opinion statement must include the following:

- (1) An identification of the expert by name and address.
- (2) The subject matter on which the expert is expected to testify.
- (3) An identification of the substance of the facts and opinions to which the expert is expected to testify.

(4) A summary of the grounds for each opinion to which the expert is expected to testify.

(5) The signature of the expert.

(6) A brief statement of the expert's qualifications or a current curriculum vitae.

(d) The parties shall submit a joint statement of undisputed facts at least 20 days prior to the hearing.

§ 41.116. Amendments to position papers.

The Bureau may permit a party to amend its position paper upon motion of the party and for good cause shown.

§ 41.117. Penalties for noncompliance.

(a) A party will not be permitted to offer the testimony of a witness at a hearing on a provider appeal unless either the party disclosed the identity of the witness in the party's position paper or the party establishes that there is good cause to permit the testimony of the witness.

(b) A party will not be permitted to introduce a document into evidence at a hearing on a provider appeal unless the party identified the document as an exhibit and served the other parties to the provider appeal with a copy of the document at the time the party filed its position paper with the Bureau unless there is good cause.

(c) This section does not preclude a party from introducing a document or testimony solely for use as an impeachment of a witnesses's credibility even if a party did not give advance notice to the opposing party.

§ 41.118. Authorized forms of discovery.

Once the time period for mandatory disclosures has elapsed, a party to a provider appeal commenced by a request for hearing may obtain discovery by one or more of the following methods:

- (1) Interrogatories.
- (2) Requests for the production of documents.
- (3) Expert reports.
- (4) Requests for admission.
- (5) Depositions of witnesses and designees of parties.

§ 41.119. General scope of discovery.

(a) Parties may obtain discovery regarding a matter, not privileged, that is relevant to the claim or defense of another party in a provider appeal, including the existence, description, nature, custody, condition and location of the books, documents or other tangible things and the identity and location of persons having knowledge of a discoverable matter.

(b) Except to the extent inconsistent with or as otherwise provided in this chapter, discovery shall be governed by Pa.R.C.P. 4001—4020 as authorized by this chapter. The term "court" as used in the Pa.R.C.P. means "Bureau"; the term "prothonotary" or "clerk of court" as used in the Pa.R.C.P. means "Formal Docketing Unit."

§ 41.120. Limitations on scope of discovery.

(a) In addition to the general limitation on the scope of discovery and deposition in Pa.R.C.P. No. 4011 (relating to limitation of scope of discovery and deposition), the following limitations on discovery apply:

(1) Interrogatories to a party, as a matter of right, may not exceed ten in number. Interrogatories inquiring as to the names and locations of witnesses, or the existence,

location and custodian of documents or physical evidence each will be construed as one interrogatory.

(i) Other interrogatories, including subdivisions of one numbered interrogatory, will be construed as separate interrogatories.

(ii) If counsel for a party believes that more than ten interrogatories are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional interrogatories.

(iii) Counsel are expected to comply with this requirement in good faith. If the parties cannot agree on a written stipulation, the Bureau, upon motion of a party, may permit the party to serve additional interrogatories if the party establishes to the Bureau's satisfaction that additional interrogatories are reasonable and necessary in light of the particular facts involved and that they will not prevent the prompt and efficient adjudication of the provider appeal.

(2) Request for admissions to a party, as a matter of right, will not exceed ten in number.

(i) Requests for admissions, including subdivisions of one numbered request, will be construed as a separate request.

(ii) If counsel for a party believes that more than ten requests for admission are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional requests.

(iii) Counsel are expected to comply with this requirement in good faith. If the parties cannot agree on a written stipulation, the Bureau, upon motion of a party, may permit the party to serve additional requests for admission if the party establishes to the Bureau's satisfaction that additional requests for admission are reasonable and necessary in light of the particular facts involved and that they will not prevent the prompt and efficient adjudication of the provider appeal.

(3) Depositions, as a matter of right, may not exceed three in number.

(i) A deposition of a person will not be permitted if the person has already been deposed in the appeal.

(ii) If counsel for a party believes that more than three depositions or that the deposition of a person who has already been deposed are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional depositions.

(iii) Counsel are expected to comply with this requirement in good faith. If the parties cannot agree on a written stipulation, the Bureau, upon motion of a party, may permit the party to take additional depositions if the party establishes to the Bureau's satisfaction that additional depositions are reasonable and necessary in light of the particular facts involved and that they will not prevent the prompt and efficient adjudication of the provider appeal.

(b) Unless the Secretary has been identified as a witness by the program office, a party may not depose the Secretary.

(c) Unless a senior Department official has been identified as a witness by the program office or agrees to submit to a deposition, a party may not depose a senior Department official regardless of the number of depositions taken, except that the Bureau, upon motion of a

party, may permit the party to depose a senior Department official if the party establishes to the Bureau's satisfaction that the following apply:

(1) The senior Department official was personally involved in the disputed agency action.

(2) The deposition of the senior Department official is reasonable and necessary in light of the particular facts involved and will not prevent the prompt and efficient adjudication of the provider appeal.

(d) The Bureau may issue protective orders limiting or precluding discovery in accordance with § 41.120(a)—(c) (relating to limitations on scope of discovery) or as specified in Pa.R.C.P. No. 4012 (relating to protective orders).

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.145—35.152 as the sections relate to discovery only.

§ 41.121. Timing and sequence of discovery.

Unless the Bureau upon motion, for the convenience of parties and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used regardless of sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, does not operate to delay another party's discovery.

§ 41.122. Supplementing disclosures and responses.

(a) A party has a duty to supplement or correct a disclosure under §§ 41.111—41.117 to include information thereafter acquired if ordered by the Bureau or if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(b) A party is under a duty to supplement responses made to discovery requests as set forth in Pa.R.C.P. No. 4007.4 (relating to supplementing responses).

§ 41.123. Signing of disclosures, discovery requests, responses and objections.

(a) Every disclosure shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(b) Every discovery request, response or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the signer's address.

(c) The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information and belief, formed after a reasonable inquiry, the request, response or objection is:

(1) Consistent with this chapter and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law.

(2) Not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(3) Not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(d) If a request, response or objection is not signed, it will be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection, and a party will not be obligated to take action with respect to it until it is signed.

(e) If without substantial justification a certification is made in violation of this section, the Bureau, upon motion or upon its own initiative, will impose upon the individual who made the certification, the party on whose behalf the disclosure, request, response or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable attorney fees.

MOTIONS

§ 41.131. Motions in general.

(a) This section applies to every motion, except oral motions made during the course of a hearing.

(b) Motions and responses to motions must be in writing, signed by a party or its attorney and accompanied by a proposed order.

(c) Unless the time is extended by the Bureau, a response to a dispositive motion shall be filed within 30 days of service of the motion, and a response to other motions shall be filed within 20 days of service of the other motions.

(d) Except in the case of a dispositive motion, the Bureau will deem a party's failure to respond to a motion to be the party's lack of opposition to the motion.

(e) Except in the case of a dispositive motion, the moving party may not file a reply to a response to its motion, unless the Bureau orders otherwise.

(f) Subsections (a)–(e) supersede 1 Pa. Code §§ 35.54, 35.55 and 35.179 (relating to motions as to complaint; motions as to answer; and objections to motions).

§ 41.132. Actions on motions.

(a) The Bureau will rule on dispositive motions within 60 days after the moving party's reply to the nonmoving party's response, if a reply is filed. If the moving party does not file a reply, the Bureau will rule on a dispositive motion within 60 days after the date on which the nonmoving party's response is due.

(b) The Bureau will rule on motions other than dispositive motions within 30 days after the date on which the nonmoving party's response is due.

(c) Notwithstanding subsections (a) and (b), the Bureau will rule on each outstanding prehearing motion no later than 20 days prior to the commencement of the hearing.

(d) Subsections (a)–(c) supersede 1 Pa. Code § 35.180(a) (relating to action on motions).

§ 41.133. Procedural motions.

(a) This section applies to motions that pertain to the procedural aspects of a case, including motions for continuance, expedited consideration, extensions of time in which to file documents and stays of proceedings.

(b) Procedural motions must contain a statement indicating the nonmoving party's position on the relief requested or a statement that the moving party, after a reasonable effort, has been unable to determine the nonmoving party's position.

(c) If the parties consent to the relief requested, the request may be embodied in a letter, provided the letter indicates the consent of the other parties.

(d) Requests for extensions or continuances, whether in letter or motion form, must be accompanied by a proposed order.

(e) Procedural motions and responses may not be accompanied by supporting memoranda of law unless otherwise ordered by the Bureau.

§ 41.134. Discovery motions.

(a) This section applies to motions filed to resolve disputes arising from the conduct of discovery under §§ 41.118–41.121.

(b) A motion to compel discovery must contain as exhibits the discovery requests and answers giving rise to the dispute.

(c) A party may file a memorandum of law in support of its discovery motion or its response to a discovery motion. The supporting memorandum of law shall be filed at the same time the motion or response is filed.

§ 41.135. Dispositive motions.

(a) This section applies to dispositive motions.

(b) Motions for summary judgment or partial summary judgment and responses to those motions must conform to Pa.R.C.P. No. 1035.1–1035.5 (relating to motion for summary judgment).

(c) Dispositive motions must be accompanied by a supporting memorandum of law. The Bureau may deny a dispositive motion if a party fails to file a supporting memorandum of law.

(d) An affidavit or other document relied upon in support of a dispositive motion, response or reply, that is not already a part of the record, must be attached to the motion, response or reply or it will not be considered by the Bureau in ruling thereon.

§ 41.136. Miscellaneous motions.

(a) This section applies to a motion not otherwise addressed in §§ 41.133–41.135 (relating to procedural motions; discovery motions; and dispositive motions), including a motion in limine, a motion to strike and a motion for recusal.

(b) A memorandum of law in support of a miscellaneous motion or response to a miscellaneous motion shall be filed with the miscellaneous motion or response.

MEDIATION

§ 41.141. Voluntary mediation.

(a) Upon request by the parties, the Bureau may stay a provider appeal commenced by a request for hearing for up to 120 days to allow the parties to utilize voluntary mediation services through the Office of General Counsel Mediation Program.

(b) The parties shall file their request for stay with the Bureau at least 14 days before initiation of hearings by the Bureau.

(c) At the end of the initial stay, the parties shall jointly file a statement that sets forth the status of

mediation activities conducted. The parties may request an additional stay if necessary to complete the mediation process.

(d) The grant of an additional stay for mediation is in the Bureau's discretion and the Bureau may impose limitations the Bureau deems appropriate.

(e) A party's participation in voluntary mediation may not be used as evidence in a proceeding before the Bureau.

(f) Communications between the parties during the mediation period shall be regarded as offers of settlement and are neither discoverable nor admissible as evidence in a proceeding before the Bureau.

HEARINGS

§ 41.151. Initiation of hearings.

(a) If, after the Bureau has ruled on a dispositive motion, a hearing is required to determine the remaining issues, the Bureau will, after consultation with the parties, schedule a formal evidentiary hearing and send a notice of hearing to each of the parties to the provider appeal.

(b) A hearing may, if permitted by this chapter or by agreement of the parties, be conducted via telephone.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.121 (relating to initiation of hearings).

§ 41.152. Continuance of hearings.

(a) A hearing may not be continued except for compelling reasons.

(b) A motion for continuance of a hearing must be submitted to the Bureau in writing with a copy served upon the other parties to the proceedings, except that during the course of a hearing in a proceeding, the requests may be made by oral motion in the hearing.

(c) In the event that the parties are engaged in good faith settlement negotiations, the Bureau may grant a joint continuance request of not more than 60 days.

§ 41.153. Burden of proof and production.

(a) Except as provided in subsection (b), the provider has the burden of proof to establish its case by a preponderance of the evidence and is required to make a prima facie case by the close of its case-in-chief.

(b) If the agency action at issue in the provider's appeal is based upon the Department's determination that the provider committed an act prohibited by section 1407(a)(1) of the Public Welfare Code (62 P. S. § 1407(a)(1)), or § 1101.75(a)(1) or (2) (relating to provider prohibited acts), the Department has the burden of proving that the provider violated those provisions. The provider has the burden of proving the other issues raised in the provider's request for hearing.

(c) The party with the burden of proof has the burden of production, unless otherwise directed by the presiding officer, upon a determination included in the record by the presiding officer that the evidence is peculiarly within the knowledge or control of another party or participant, in which case the order of presentation may be varied by the presiding officer.

(d) Each party shall have the right to an opening statement, presentation of evidence, cross-examination, objection, motion and argument and closing argument.

(e) A pleading or a position paper must, without further action, be considered part of the record. A pleading

or a position paper will never be considered as evidence of a fact other than that of the filing thereof, unless offered and received into evidence under this chapter.

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.125 and 35.126 (relating to order of procedure; and presentation by the parties).

EVIDENCE AND WITNESSES

§ 41.161. Written testimony.

(a) Written testimony of a witness, including an expert witness, on numbered lines in question and answer form, may be admitted into evidence provided the witness is present for cross-examination at the hearing or the parties agree that the witness' presence at the hearing is not required.

(b) Written testimony shall be filed concurrently with the proffering party's position paper unless a different time is prescribed by the Bureau. Objections to written testimony that can be reasonably anticipated prior to hearing must be in writing and filed within the time prescribed for prehearing motions in limine, unless otherwise ordered by the Bureau.

(c) If a party desires to file written testimony prior to the close of the record, it may do so only upon motion approved by the Bureau for good cause. This approval will include the scope of the written testimony and the time for filing the testimony and service upon opposing counsel.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.138 and 35.139 (relating to expert witnesses; and fees of witnesses).

§ 41.162. Subpoenas.

(a) Except as otherwise provided in this chapter or by order of the Bureau, requests for subpoenas and subpoenas will be governed by Pa.R.C.P. No. 234.1—234.4 and 234.6—234.9. The term "court" as used in Pa.R.C.P. means "Bureau"; the term "Prothonotary" or "clerk of court" as used in Pa.R.C.P. means "Formal Docketing Unit."

(b) Proof of service of the subpoena need not be filed with the Bureau.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.142 (relating to subpoenas).

PRESIDING OFFICERS

§ 41.171. Independence.

(a) The presiding officers will act independently of employees or public officials of the Department whose actions are subject to review before the Bureau.

(b) The presiding officers may not engage in ex parte communications concerning a hearing with a party to the hearing.

(c) A presiding officer may withdraw from a proceeding when he deems himself disqualified, or he may be withdrawn by the agency head for good cause found after timely affidavits alleging personal bias or other disqualification have been filed and the matter has been heard by the agency head or by another presiding officer to whom the agency head has delegated the matter for investigation and report.

POSTHEARING PROCEDURES

§ 41.181. Posthearing briefs.

(a) The initial posthearing brief of each party must be as concise as possible and may not exceed 50 pages. An initial posthearing brief must contain proposed findings of

fact, with references to the appropriate exhibit or page of the transcript, an argument with citation to supporting legal authority and proposed conclusions of law.

(b) The provider shall file its initial posthearing brief first and within the time specified by the presiding officer, which may not be less than 30 days from the closing of the record unless the provider consents to a shorter period of time. The program office will file its initial posthearing brief within 30 days of the date of service of the provider's brief.

(c) The provider may file a reply brief within 20 days of service of the program office posthearing brief. A reply brief must be as concise as possible and may not exceed 25 pages.

(d) Longer briefs and surreply briefs may be permitted at the discretion of the presiding officer.

(e) A party may waive the filing of a posthearing brief.

(f) If a party files a posthearing brief, a disputed issue or legal theory that is not argued in the party's posthearing brief will be deemed waived.

(g) Subsections (a)—(f) supersede 1 Pa. Code §§ 35.191—35.193 (relating to proceedings in which briefs are to be filed; content and form of briefs; and filing and service of briefs).

AGENCY ACTION

§ 41.191. Determinations and recommendations by the Bureau.

(a) The Bureau will conduct a de novo review of the factual and legal issues that are timely raised and properly preserved in a provider appeal. Except as provided in subsection (b), the Bureau will issue a determination adjudicating the contested issues of law and fact within its jurisdiction, and issue an appropriate order, decree or decision.

(b) If a request for hearing includes a waiver request, the Bureau will make a written recommendation for consideration by the Secretary proposing that the waiver be either granted or denied and stating the Bureau's reasoning in support of its position. If the request for hearing raises factual and legal issues in addition to the waiver request, the Bureau will issue its written recommendation together with its final determination adjudicating the remaining factual and legal issues, as specified in subsection (c). If the request for hearing does not raise other issues, the Bureau's written recommendation on the waiver request will be issued within the time limits and served on the parties as specified in subsection (c).

(c) The Bureau will issue a determination in a provider appeal within 30 days of the filing of the posthearing briefs, or, if the parties waive the filing of posthearing briefs, within 30 days of the close of the record or receipt of the transcript, whichever is later. The Bureau will serve a copy of its determination on the parties to the proceeding or their representatives.

(d) A party aggrieved by a determination of the Bureau may request the Secretary to review the determination under § 41.212 (relating to review of Bureau determinations). For purposes of this section, a program office will be deemed to be aggrieved if the Bureau determination does one or more of the following:

- (1) Sustains the provider's appeal in whole or in part.
- (2) Interprets a statute, regulation, statement of policy or bulletin applied by the program office in a manner inconsistent with the interpretation of that office.

(3) Alters a policy of the program office or purports to impose a new or different rule or policy on the program office.

(e) The Secretary will review written recommendations of the Bureau issued under subsection (b) or (c) under § 41.213 (review of bureau recommendations).

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.201—35.207, 35.211—35.214 and 35.221.

REOPENING OF RECORD

§ 41.201. Reopening of record prior to adjudication.

(a) After the conclusion of the hearing on the merits and before the Bureau issues an adjudication, the Bureau, upon its own motion or upon a motion filed by a party, may reopen the record as provided in this section.

(b) The record may be reopened upon the basis of recently discovered evidence when each of the following circumstances are present:

(1) Evidence is discovered that conclusively establishes a material fact of the case or that contradicts a material fact that had been assumed or stipulated by the parties to be true.

(2) Evidence is discovered after the close of the record and could not have been discovered earlier with the exercise of due diligence.

(3) Evidence is not cumulative.

(c) The record may also be reopened to consider evidence that has become material as a result of a change in legal authority occurring after the close of the record. A motion to reopen the record on this basis must specify the change in legal authority and demonstrate that it applies to the matter pending before the Bureau. The motion need not meet the requirements of subsection (d)(2) and (3).

(d) A motion seeking to reopen the record must:

(1) Identify the evidence that the moving party seeks to add to the record.

(2) Describe the efforts that the moving party had made to discover the evidence prior to the close of the record.

(3) Explain how the evidence was discovered after the close of the record.

(e) A motion filed under subsection (b) must be verified and motions to reopen must contain a certification by counsel that the motion is being filed in good faith and not for the purpose of delay. The motion shall be served upon the parties to the proceedings.

(f) Upon written request or motion to the Bureau or sua sponte by the Bureau, the parties will be afforded the opportunity to file amended pleadings and position papers, if the Bureau orders that the record be reopened. The additional pleadings and position papers will be due to the Bureau as ordered by the presiding officer.

(g) Subsections (a)—(f) supersede 1 Pa. Code §§ 35.231 and 35.232 (relating to reopening of application of party; and reopening by presiding officer).

RECONSIDERATION AND REVIEW BY THE SECRETARY

§ 41.211. Reconsideration of interlocutory orders.

(a) A motion for reconsideration by the Secretary of an interlocutory order or ruling of the Bureau must be filed within 10 days of the order or ruling. The petition must demonstrate that extraordinary circumstances justify im-

mediate consideration of the matter by the Secretary. A party may file a memorandum of law at the time the motion or response is filed.

(b) A copy of the motion shall be served upon the parties. A party wishing to file an answer may do so within 10 days of service or as ordered by the Bureau or the Secretary.

(c) The failure of a party to file a motion under this section will not result in a waiver of an issue.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

§ 41.212. Review of Bureau determinations.

(a) A determination of the Bureau will be deemed the final adjudication of the Department effective upon expiration of the 30-day time period specified in subsection (b) unless an aggrieved party requests review by the Secretary within that 30-day time period.

(b) A request for review shall be filed within 30 days of the mailing date of the Bureau determination. An untimely request for review will be dismissed as of course unless the filing party can satisfy the requirements of § 41.33 (relating to appeals nunc pro tunc).

(c) A request for review must be in writing, state concisely the alleged errors in the Bureau determination and identify the particular relief sought. If the party requesting review is seeking relief by reason of matters that have arisen since the hearing and Bureau determination, or by reason of a matter that would arise from compliance with the Bureau determination, the party shall specifically identify those matters in its request.

(d) If an aggrieved party timely requests review of a Bureau determination, the Secretary may enter an order granting or denying the request for review within 30 days of receipt of the request. No party has a right to have a Bureau determination reviewed by the Secretary, but only a right to request this review. The decision to grant or deny a request lies within the discretion of the Secretary.

(e) If the Secretary enters an order denying a request for review within 30 days of receipt of the request, the Bureau's determination will be deemed the final adjudication of the Department effective on the date of the order denying the request for review.

(f) If the Secretary fails to act on a request for review within 30 days of receipt of the request, the request for review will be deemed denied. The Bureau's determination will be deemed the final adjudication of the Department effective on the date on which the request for review is deemed denied.

(g) Answers to a request for review will not be considered by the Secretary unless the Secretary has granted review. If, and to the extent the Secretary has granted review, a response in the nature of an answer may be filed by a party, other than the party requesting review. The response must be confined to the issues upon which the Secretary has granted review.

(h) If the Secretary grants review, the Secretary will enter a final order within 180 days of the date of the

order granting review. The final order may affirm, reverse or modify the findings of fact, conclusions of law or the relief set forth in the Bureau's determination, and may, to promote fairness and the proper administration of the MA Program, waive compliance with program requirements.

(i) If the Secretary fails to act within 180 days of the order granting review, the determination of the Bureau will be deemed approved by, and the final order of, the Secretary effective the date it is deemed approved.

§ 41.213. Review of Bureau recommendations.

(a) The Secretary will review and issue a final order adopting, rejecting or modifying a recommendation of the Bureau issued under § 41.191(b) (relating to determinations and recommendations by the Bureau).

(b) A party to the provider appeal in which the Bureau's recommendation was issued may file a brief with the Secretary setting forth its position regarding the recommendation at the same time the party requests review of the Bureau's related determination under § 41.212 (relating to review of Bureau determinations) or, if the party is not seeking review of the Bureau's determination, within 30 days of the date of the mailing date of the Bureau recommendation.

(c) A brief supporting or opposing the Bureau's recommendation must state concisely the reasons for the party's position on the recommendation, set forth proposed findings of fact and conclusions of law for consideration by the Secretary and specify what relief should be granted or denied by the Secretary. The brief may not exceed 25 pages.

(d) The Secretary's final order regarding a recommendation issued under § 41.191(b) will be issued in accordance with the following:

(1) If review is granted under § 41.212, the date on which the Secretary issues a final order.

(2) If review is not granted under § 41.212, 180 days from the date of receipt of the written recommendation.

(e) If the Secretary does not issue a final order regarding a recommendation issued under § 41.191(b) within the time frames specified in subsection (d), the recommendation of the Bureau will be deemed adopted by, and the final order of, the Secretary effective the date it is deemed adopted.

§ 41.214. Appeals.

A provider aggrieved by a final adjudication of the Department issued under § 41.212(a), (e) or (f) (relating to review of Bureau determinations), or a final order of the Secretary issued under § 41.212 (e), (h) or (i) or § 41.213(a) or (d) (relating to review of Bureau recommendations) may petition for judicial review in accordance with 2 Pa.C.S. Chapter 7, Subchapter A (relating to judicial review of Commonwealth agency action).

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